

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-6114

Bo/L

In The

United States Court of Appeals

For The Second Circuit

FRIENDSHIP DAIRIES, INC., POLLIO DAIRY
PRODUCTS CORP., CROWLEY FOODS, INC.,
QUEENSBORO FARM PRODUCTS INC., SARATOGA
DAIRY, INC., DELTOWN FOODS, INC., ELMHURST
MILK AND CREAM CO., INC., QUEENS FARMS, INC.,
and CUBA CHEESE AND TRADING CO., INC.,

Plaintiffs-Appellants,

-against-

EARL BUTZ, Secretary of the Department of Agriculture of the
United States,

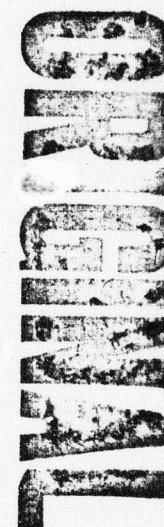
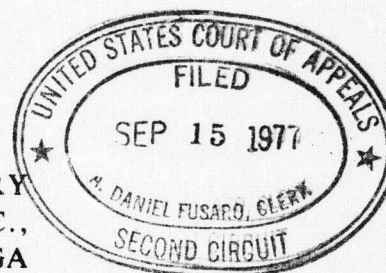
Defendant-Appellee,

-and-

PENNMARVA DAIRYMEN'S COOPERATIVE
FEDERATION, INC.,

Intervenor-Appellee.

*From an Order and Judgment of the United States District
Court for the Eastern District of New York in 75c 1517.*



JOINT APPENDIX

Volume II, pp. 290a - 580a

Of Counsel:

DAVID C. TOOMEY
DUANE MORRIS & HECKSCHER
1600 Land Title Building
100 South Broad Street
Philadelphia, Pennsylvania 19110

PHILIP PIERCE
BOOTH LIPTON & LIPTON
Attorneys for Plaintiffs-Appellants
405 Park Avenue
New York, New York 10022
(212) 758-1700

ROGER DOERING
SIMPSON THATCHER & BARTLETT
Attorney for Intervenor-Appellee
One Battery Park Plaza
New York, New York 10004
(212) 483-9000

DAVID G. TRAGER
*United States Attorney for the
Eastern District of New York
Attorney for Defendant-Appellee*
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201
(212) 330-7523

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
District Court Docket Entries	1a
Documents from the Rule-Making Hearing (In Administrative Record):	
Notice of Hearing on Proposed Amend- ments to Tentative Marketing Agree- ments and Orders	2a
Excerpts of Transcript of Promulgation Hearing Held on February 20 and 21, 1974	9a
Excerpts of Transcript of Promulgation Hearing Held on February 22, 25, 26, 1974	284a
Excerpts of Transcript of Promulgation Hearing Held on February 27 and 28, 1974	520a
Exhibits (Part 5 and 6 of Administra- tive Record):	
X1 -- Federal Register, Volume 39 Number 32, Pgs. 5579-5740	767a
X6 -- Notice of Hearing on Proposed Amendments to Tentative Market- ing Agreements and Orders	926a
X9 -- Schedule of Losses in Number of Producers & Pounds of Produc- tion During a 12 Month Period from October, November & December, 1972 to October, November & De- cember, 1973	930a

Contents

	Page
X10 — Schedule of Estimated Federal Order Blend Prices Using Snubber & Minnesota-Wisconsin Series Formulas Showing Differences in Prices Between Formulas Together With Schedule Showing Losses in Produced Receipts for Milk Utilized in Lowest Class	933a
X11 — Schedule of Lost Markets	935a
X18 — (Table 1) Change from 1972 to 1973, in Receipts from Producers Quantity of Class II milk, and Milk Used to Produce Powder and Butter Order 2, January - March	936a
X18 — (Table 2) Total Class II Skim Milk and Butterfat and Percentages Used to Produce Powder and Butter Respectively, by Months, 1972 . .	937a
X24 — Schedule of Minnesota-Wisconsin Butter-Powder Price with Comparison of M.W. to B.P. 1972-1973	938a
X32 — Letter from Joe Cotter to Harry C. Trelogan Dated February 22, 1974	939a
X33 — Letter from Henry C. Trelogan to Joe Cotter Dated February 26, 1974	941a

Contents

	Page
X40 — Analysis of Manufacturing Grade Milk Prices in Minnesota and Wisconsin and Various Meas- ures of Manufacturing Milk Values (July 1968)	943a
Pamphlet, "Agricultural Prices, April 1974"	1061a
Pamphlet, "Prices Received by Farm- ers for Manufacturing Grade Milk" . .	1076a
Partial Decision on Proposed Amend- ments to Marketing Agreements and to Orders	1083a
Order Amending Orders Published Ap- ril 2, 1974	1110a
Final Order of the Secretary of Agri- culture	1125a
Documents From the Administrative Appeal:	
Petition of Cuba Cheese Co.	1143a
Application for Interim Relief	1152a
Answer to Petition	1156a
Answer to Application for Interim Re- lief	1158a
Order Denying Interim Relief	1165a
Order of Consolidation	1166a

iv
Contents

	Page
Transcript of Hearing on July 1, 1974 . .	1168a
Stipulation Respecting Amended Petition and Certain Additional Documents . . .	1284a
Administrative Law Judge's Initial De- cision	1286a
Appeal Petition of Cuba Cheese Com- pany	1344a
Judicial Officer's Decision and Order . .	1347a
Documents from the District Court Record:	
Complaint	1354a
Answer	1360a
Notice of Motion to Intervene	1365a
Affidavit of Paul E. Hand in Support of Motion	1367a
Opinion and Order Granting Interven- tion	1371a
Plaintiffs' Motion for Summary Judg- ment	1377a
Memorandum of Law in Support of Plaintiffs' Motion	1378a
Defendant's Motion for Summary Judg- ment	1413a

Contents

	Page
Defendant's Statement Pursuant to Rule 9(g)	1414a
Memorandum of Law in Support of De- fendant's Motion	1415a
Decision and Order of Neaher, U.S.D.J. on May 18, 1977 Denying Plaintiffs' Motion for Summary Judgment and Granting Defendant's Motion for Sum- mary Judgment	1451a

1 Thank you, sir.

2 JUDGE McALPIN: Are there any questions?

3 MR. PALMER: Yes.

4 CROSS-EXAMINATION

5 BY MR. PALMER:

6 Q I would like to clarify the very last statement,
7 where your proposal is that the Class II price should be the
8 basic formula price for the month. You said that as an alter-
9 native you would support Proposal No. 5, which has the seasonal
10 factor involved.

11 I am just wondering which is your preference? Do
12 you wish a seasonal factor --

13 A As I understand it, Proposal No. 5 is basically the
14 same as four, with the exception of the months of April, May
15 and June; is this correct, sir?

16 Q Yes.

17 A This is an alternative which I was told the Commis-
18 sion would accept.

19 Q I see. But your first preference is that the basic
20 formula price should prevail in 12 months?

21 A Yes, sir.

22 MR. PALMER: Thank you, sir.

23 JUDGE McALPIN: Further questions? Hearing none,
24 thank you very much, sir.

25 MR. GINTFORD: Thank you, sir.

292a

1 (The witness was excused)

2 MR. TOOMEY: Judge McAlpin, I wonder if I might
3 at this point enter my appearance formally in the record.

4 JUDGE McALPIN: You certainly may.

5 MR. TOOMEY: David C. Toomey, T-O-O-M-E-Y, as Co-
6 counsel with Roland Morris, on behalf of the Association of
7 Ice Cream Manufacturers of New York State and the Mid-Atlantic
8 Ice Cream Manufacturers Association.

9 JUDGE McALPIN: Thank you very much.

10 MR. COCHRAN: Your Honor, while we have a break here
11 I would like to request official notice of official document.
12 The document I refer to is entitled, "Dairy Products". It
13 bears the date December, 1973.

14 It has the typewritten matter on it "Release January
15 30, 1974". It shows that it is released by the United States
16 Department of Agriculture Statistical Reporting Service. I
17 request official notice of that document.

18 JUDGE McALPIN: All right, sir. Without objection,
19 the document referred to will be given official notice, and as
20 such is now of record.

21 MR. COCHRAN: Thank you.

22 JUDGE McALPIN: Gentlemen, we are now ready to resume
23 where we left off at recess yesterday, at which time we were
24 discussing Dr. Machis. Are there further questions to be
25 proposed to Dr. Machis?

1 All right, sir. Dr. Mathis, would you return to the
2 witness stand?

3 Whereupon,

4 DR. JOSEPH A. MATHIS

5 having been previously duly sworn by the Chief Administrative
6 Law Judge, was recalled as a witness herein, and was examined
7 and testified further as follows:

8 JUDGE McALPIN: I remind you, sir, that you are still
9 under oath.

10 THE WITNESS: Yes, sir. Thank you.

11 JUDGE McALPIN: Mr. Miller, I believe we left off
12 with you. You may resume.

13 CROSS-EXAMINATION (Resumed)

14 BY MR. MILLER:

15 Q Dr. Mathis, isn't the purpose of your requested
16 amendment to encourage more production of milk in order for
17 there to be a sufficient supply to meet the needs of consumers?

18 A That is one of the purposes, yes.

19 Q And do you believe that the amendment requested will
20 accomplish this purpose?

21 A We are hoping that it will.

22 Q I direct you to Table No. 8 in your presentation.
23 If you were to add to the last column called "Depression of
24 Uniform Price" in the first grouping for your reporting for
25 Order 2 for the month of October, '73 through January, 1974, 11

294a

1 you were to add to that column the blend prices actually re-
2 ported for those four months, and average them, that calcula-
3 tion would show an average of \$8.62.

4 And, added to your reported average for Order 2 for
5 those four months of the amount of depression, namely 38 cents,
6 you would then come to a projected blend for those four months
7 averaging \$8.99.

8 Have you followed --

9 A I have followed that.

10 MR. MICALE: Your Honor, are we going to be engaging
11 in computations outside Mr. Mathis' table? If we are, I again
12 object, along the same lines that most of our objections
13 yesterday were taken.

14 This type of questioning is leading Mr. Mathis to
15 virtually demonstrate what he can do with Mr. Miller's figures.
16 It is not proper cross-examination.

17 MR. COPELAND: If Your Honor please, may I also offer
18 an objection for a different reason? I suppose it is a ques-
19 tion, but the way the question is phrased, it contains in it
20 calculations which purport to be correct, and we don't know
21 whether or not they are correct.

22 Now, perhaps my objection may be premature because
23 perhaps Mr. Miller will complete the question in such a way
24 as to complete it properly. But I think if it remains in the
25 record this way, it carries with it perhaps the aura that it

295a

1 is a correct calculation, and we don't know that that is so.

2 MR. HAMMERMAN: May we be heard before you rule,
3 please?

4 JUDGE McALPIN: Surely, Mr. Hammerman.

5 MR. HAMMERMAN: Mr. Miller's question to the witness
6 was, is this calculation correct. Now, the objections we just
7 heard have no validity if the witness answers it and says that
8 it is correct.

9 JUDGE McALPIN: That isn't what the question was.
10 He asked him if he was following him and the witness said yes
11 he was. I am going to rule, Mr. Miller, as I did yesterday
12 that you will not be permitted to testify in the guise of
13 questions.

14 This one, I think, is in that same line. If you
15 persist I am going to rule you out of order and order that you
16 not participate any further in asking questions if you can't
17 do it in line with the way I have indicated.

18 Now you may ask a question, but you will not be
19 permitted to testify unless you are under oath, and you will
20 be given every opportunity to testify under oath, if you so
21 desire.

22 So the objections are sustained.

23 MR. MILLER: May I proceed, Your Honor?

24 BY MR. MILLER:

25 Q If a calculation --

296a

1 JUDGE McALPIN: Mr. Miller, there will be no question
2 on your calculations. What is testimony unsworn and I have
3 indicated that I won't accept it. Now, you will have an oppor-
4 tunity to testify and put it in if you like.

5 I am not ruling out whatever testimony you may want
6 to give, but it will not be done in the form of testimony in
7 the guise of cross-examination.

8 BY MR. MILLER:

9 Q If the return to producers with the adoption of your
10 proposal for Order 1 farmers were to end at the lesser return
11 than the blended prices to farmers in Order 1 and Order 15
12 received without the adoption of any amendment, why is it nec-
13 essary to request an improvement in the price return through
14 this proposed amendment in Order 1 and Order 15?

15 A We made a proposal that all of the orders be amended
16 in this manner, not just New York and New Jersey.

17 Q I understand what you have proposed. But I am asking
18 why do you propose it for Orders 1 and 15 without any improve-
19 ment due to the adoption of your amendment in Order 1 and Order
20 15? The blend return to producers in that area already exceeds
21 your projection of the return to Order 2 producers with the
22 adoption of your amendment.

23 A That may be. This is a product of the difference
24 of the degree of Class 1 utilization in the pool and the dif-
25 ferences in the degree to which our proposal will have an impact

297a

1 on their blends. It is a mathematical result.

2 Q May I direct you to Page 12 of your testimony.

3 You refer in the last full paragraph on the page to
4 a need for an increase in uniform price in order to assure an
5 adequate supply of milk for consumers in the markets referred
6 to; is that correct?

7 A If you are asking for an explanation as to what I
8 mean in the last full sentence in that paragraph I can give it
9 to you.

10 Q Please.

11 A All right. What I am saying here is that unless
12 the effect of the depression of Class II prices on these pools
13 on the blend prices is removed -- right now, as I pointed out
14 previously in this paragraph, it is more than offsetting any
15 improvement that is coming about by the increases in Class I
16 price.

17 Unless we do something to get rid of this impact on
18 depressed Class II on the blends we are going to have to seek
19 higher Class I prices than we anticipate will result through
20 the normal operation of a formula through the remainder of this
21 year.

22 If we are going to have to put all of the pressure
23 on the Class I side of the equation in order to produce adequate
24 income for dairy farmers we are going to have to push the Class
25 I price levels substantially higher than they already are.

298a

1 All I am saying here is that that is the alternative
2 that we have.

3 Q Don't you make the point that it is your fear that
4 if nothing is done there will be an insufficient supply of
5 milk for consumers?

6 A Yes, sir. And that in order to avoid that we will
7 have to seek further increases in Class I prices. I am not
8 in my own mind convinced that that is in the better interest of
9 anybody in the dairy industry, including the producers.

10 But if we are put in a position where that is the
11 only alternative we have, then that is what we will do.

12 Q And the milk that you referred to is milk for gen-
13 eral purposes, or generally referred to as Class I milk?

14 A Yes.

15 Q You are aware, are you not, that there is a reserve
16 supply in the form of Class II milk in order ² ~~to~~, at the worst
17 time of the year in our history, of at least one quart of milk
18 for each two quarts of milk needed for Class I use. In other
19 words, that there is never higher than 66 and two-thirds per-
20 cent Class I utilization.

21 A If you are asking me if the Class I utilization
22 never ran higher than that during 1973 I believe you are
23 correct. I am not sure that that will be the case for 1974
24 however.

25 Q Do we not have a lot of room, if we have 50 percent

299a

1 as much milk in reserve supply in order to at the tightest
2 time of the year -- why are we so nervous about having enough
3 milk for consumers?

4 A Because you are presuming that we have 50 percent
5 of our milk in reserve. We do not. Not that is available
6 readily for the fluid milk market in the New York and New Jer-
7 sey market.

8 Q Why is it not readily available? It is approved,
9 from the point of view of Health Department regulations; is it
10 not?

11 A Certainly. All of the milk in the New York-New
12 Jersey pool is approved for health requirements. But, as you
13 know, as well as I do, there are substantial quantities of milk
14 in the New York market that are Class II, by definition, but
15 are actually associated with the Class I fluid milk operation.

16 I refer here to fluid creams, the soft products, that
17 are really part of a fluid milk handler's operation, and this
18 type of milk is not readily available, or is not considered to
19 be reserve milk in the strict sense of the word, and available
20 for the fluid industry.

21 I would also add to that that there is a substantial
22 ice cream manufacturing and frozen dessert manufacturing indus-
23 try in New York, which has a year-round demand for milk, and
24 that milk quite frequently is not readily available.

25 This is not to say that if the pressure is put on

300a

1 to the ice cream manufacturers by the co-ops or the marketing
2 administrator in accordance with the order to cull this milk
3 for fluid use that it cannot be shaken loose. But the fact
4 of the matter is it is not reserved.

5 It is not readily available. It is committed to
6 buyers. So you are not talking about 50 percent of the milk
7 in the pool available on a daily basis to buyers of Class I
8 milk.

9 Q You are changing your answer to the previous ques-
10 tion about milk for drinking purposes to consumers; are you
11 not?

12 A No, I am not.

13 MR. MILLER: That's all, Your Honor.

14 JUDGE McALPIN: Are there further questions? Mr.
15 Flounders.

CROSS-EXAMINATION

16
17 BY MR. FLOUNDERS:

18 Q Mr. Mathis, I would like to refer you to your Table
19 7. The plants there in Minnesota, do you know if many of
20 these plants are cooperative plants?

21 A I presume some of them are, yes. But I don't know
22 what the breakdown is, because there is no basis in the public-
23 ation source that I used by which I could obtain that inform-
24 ation.

25 Q Would it be fair to assume that some of the

301a

1 cooperatives that they are a part of would be -- would have
2 other plants that are cheese processing plants?

3 A It could be that they do. I don't know.

4 Q And some of them could have Grade A plants in their
5 cooperatives; is that right?

6 A That could be, also.

7 Q But you don't know one way or the other; is that
8 right?

9 A No. I have indicated that I don't. I do not. There
10 is no way that I could know.

11 Q Do you know if these same plants are all a part or
12 are any of them a part of the Minnesota-Wisconsin Series?

13 A I have no way of knowing that, because, as we said
14 earlier, there is no basis for us to know what is in the Minne-
15 sota-Wisconsin Price Series. It is very possible that some
16 of them are, since they are located in Minnesota and Wisconsin,
17 and since the sample on which the M-W Series is drawn is quite
18 broad.

19 It is very likely that some of the plants here are
20 also included in the M-W Series.

21 Q Is it also possible that some of the plants in that
22 series are part of cooperatives who have various types of
23 other plants?

24 A It could be.

25 Q But you don't know.

302a

1 A I have no way of knowing, nor do I think it is
2 important, to my original statement.

3 Q Well, that may be or it may not, but the important
4 thing that I do want to know is do you know anything about
5 the plants or the affiliation of the plants, either in this
6 series or in the Minnesota-Wisconsin Series that they may be
7 a part of?

8 A Of my own personal knowledge, I do not.

9 MR. FLOUNDERS: Thank you. That is all.

10 JUDGE McALPIN: Further questions, gentlemen?

11 Mr. Oeman?

12 CROSS-EXAMINATION

13 BY MR. OEMAN:

14 Q Mr. Mathis, who does most of the balancing of your
15 surplus milk?

16 A Proprietary handlers do our balancing. Not wholly
17 on their own. We direct the milk to them, a great portion of
18 it. But they do the physical processing of it.

19 Q If your proposals were adopted as a result of the
20 price increases, or for any other reasons you lost, let's say,
21 15, 20 or 30 percent of your Class II outlets, what would you
22 then do with this surplus milk?

23 A I don't anticipate that we are going to lose ten,
24 12 or 13 percent of our Class II outlets.

25 Q What if you did?

303a

1 A I don't know. This is a decision that the management
2 of our association would have to make. They might start up
3 the Glover operation, which I indicated yesterday was our
4 processing operation.

5 I am sure they will avoid that if they possibly
6 can, but we don't anticipate that this is going to be a prob-
7 lem this year, providing we do not have the butter-powder
8 formula price eliminated during the flush months.

9 We are confident that if we have this available during
10 the flush months of this year that the rest of the year any
11 excess milk we have will find a home very readily. We find
12 at the moment that many factories are paying premiums to get
13 milk, and I anticipate they will continue to do so.

14 By the way, there is a market for additional Class I
15 milk, too, at the present time.

16 Q If by chance in the next several months or a year or
17 so the butter-powder formula price again exceeds the M-W price
18 by some sizeable amount, what is your anticipation that you
19 will do then? Do you plan on coming back to another hearing to
20 go back to a butter-powder formula?

21 A Certainly not. That is not our anticipation at all.
22 Our belief is that the price of Class I milk should be based
23 on the basic formula price throughout the year, with the excep-
24 tions of April, May and June, as we have indicated.

25 If the butter-powder formula price goes up above the

1 M-W Series, which I doubt that it will. But if it does I
2 think that will be kind of a -- that would be for the butter-
3 powder manufacturers, and God bless them for it. They would
4 need it to offset the losses some of them will receive during
5 other parts of the year, or might receive.

6 Q One further question. You referred to an effective
7 date of July 1. What is your attitude toward the omission of
8 a recommended decision? Would you prefer to have a recommended
9 decision on this?

10 A Yes. In view of the fact that the issue is obviously
11 controversial. In our timetable it would not go into effect
12 until July 1 anyway. This seems to provide ample opportunity
13 for a recommended decision.

14 I think that unless it can be clearly shown that
15 an emergency does exist, we ought to be very careful in using
16 emergency proceedings in the Federal Order Program, and I have
17 said this before.

18 MR. OSMAN: Thank you. That is all I have.

19 JUDGE McALPIN: Are there further questions?

20 MR. HAMMERMAN: Yes.

21 CROSS-EXAMINATION

22 BY MR. HAMMERMAN:

23 Q Mr. Nathis, in answer to a question, the last ques-
24 tion, you mentioned that Eastern Milk Producers direct utili-
25 zation of its milk; is that correct?

305a

1 A Yes.

2 Q You said there were additional Class I outlets avail-
3 able; is that correct?

4 A Yes.

5 Q But instead you chose to supply the Class II plants
6 with the milk that they sought; is that right?

7 A I'm sorry, I didn't hear you.

8 Q Despite the fact that you have ample Class I mar-
9 kets you did choose to supply the Class II plants with the
10 milk which they requested; is that right?

11 A I think this shows you what I was attempting to ex-
12 plain to Mr. Miller a few moments ago. We have commitments to
13 handlers to supply them with a supply of milk. Some of that
14 milk that we have committed ourselves to supply these handlers
15 goes into their Class II operations.

16 I suppose some of it would even go to a high product
17 operation because some of the handlers we supply to make butter
18 powder and cheese. So we do not have this milk available to
19 us on short notice to pull away from those handlers the minute
20 we get a request from another handler that he would like some
21 more Class I milk on short notice.

22 Q And if you were to redirect this milk to a Class I
23 outlet, do you think it would have had any impact on the blend
24 price?

25 A Oh, I am sure it would have some impact. But the

1 quantities of milk that we are talking about are relatively
2 small, in terms of the total pool.

3 Q Wouldn't it have replaced other Class I milk?

4 A Yes, it would have.

5 Q So to that extent, at any rate, it would have no
6 impact on the uniform price.

7 A That is probably most likely.

8 JUDGE McALPIN: Further questions? Hearing none,
9 thank you, Dr. Mathis.

10 (The witness was excused).

11 JUDGE McALPIN: Gentlemen, with that testimony we
12 have concluded the presentation of proposals that were grouped
13 together in Group No. 1 in our proposed procedure. At this
14 point I want to now call for any statements or testimony favor-
15 ing the proposals made in Proposals 1, 2, 3, 4, 5, 10 and 11,
16 or any statements or testimony that is not included in formal
17 proposals, but which seek either a modification of or opposi-
18 tion to the proposals I have just indicated.

19 MR. BILLS: Your Honor, Mr. Bills would like to
20 present a witness.

21 JUDGE McALPIN: All right, sir. While we are at this
22 let me get some prospect of what we will have coming forth.
23 We will hear from the National Milk Producers Association.
24 Who else wants to be heard from at this point in time?

25 MR. HAMMERMAN: I want to be heard in opposition to

1 your competitors on the open market, you would not be in a
2 competitive position with them?

3 A That is right.

4 MR. FLOUNDERS: Thank you, sir.

5 JUDGE McALPIN: Further questions?

6 Hearing none, is there anything further, Mr. Hromco?

7 MR. HROMCO: Nothing further.

8 JUDGE McALPIN: Thank you, Mr. Hiltner.

9 Whereupon, the witness, Virgil

10 Hiltner, was excused.

11 JUDGE McALPIN: Mr. Zwanenberg?

12 Whereupon,

13 NICO van ZWANENBERG

14 was called as a witness and, having been first duly sworn by
15 Judge McAlpin, was examined and testified as follows:

16 nm DIRECT EXAMINATION

17 THE WITNESS: My name is Nico van Swanenberg. I
18 am Vice President of the Cuba Cheese and Trading Company, Incorporated of Cuba, New York.

19
20 The company I present manufactured approximately
21 10,000,000 pounds of New York State cheddar cheese in 1973. We
22 operate a totally new, modern cheese plant which came on stream
23 during the past year.

24 We purchase practically all our milk from coopera-
25 tive associations, almost entirely delivered in bulk tank

1 trucks directly from the farm to our plant. About 85 per cent
2 of this milk is pooled under Federal Order Number Two.

3 Our manufacturing plant does not have pool plant
4 designation under any federal or state order and, consequently,
5 does not have any independent producers related to it.

6 I am testifying today in opposition to any and all
7 proposals set forth in this notice of hearing which propose
8 that the Class II price under Federal Order Number Two shall
9 be the Minnesota Wisconsin manufacturing price at times when
10 it is higher than the butter-powder there used.

11 Manufacturers of cheddar cheese in New York State,
12 operating under Federal Order Number Two, are already operat-
13 ing at a distinct economic disadvantage compared to manufact-
14 urers of similar products in the Minnesota Wisconsin production
15 area as follows:

16 One; Federal Order Number Two is the only Federal
17 Order which prices milk at the farm, rather than delivered to
18 the plant.

19 Two; a hundred pounds of 3.5 per cent milk yields
20 from one-half to three quarter pounds of cheese less in New
21 York State than in the Minnesota Wisconsin production area.
22 Much information is available to substantiate this disparity
23 in cheese yields between the two manufacturing areas.

24 Studies have been made by both Cornell University
25 and the University of Wisconsin concerning this subject.

A great deal of reference was made to these studies in a Federal milk order hearing held in New York City from June 18th to August 2nd, 1952 as follows:

(a) Dr. Joseph Kosikowski of Cornell University testified that his study of New York cheddar cheese plants over a two year period -- 1950 to '51 -- showed an average cheese yield per hundredweight of 3.5 per cent milk of 9.02% of cheese containing 37 per cent moisture.

(b) Dr. Cook referred to the Cook-Bietle study made by the University of Wisconsin. His testimony showed an average cheese yield of 9.34% of cheddar cheese containing 37 per cent moisture manufactured in Wisconsin from a hundredweight of 3.5 per cent milk.

The increased cost assumed by New York State cheddar manufacturers resulting from farm point pricing and lower yields can be arrived at as follows:

One; for the sake of making this computation as conservative as possible, we shall assume that an annual average yield of 9.25% of cheddar cheese of 37 per cent moisture is attainable from a hundredweight of 3.5 per cent milk in New York State and that the difference in cheese yield between the Minnesota Wisconsin production area and the New York State production area is only .5 pounds per hundredweight of 3.5 per cent milk.

Two; the average bulk milk hauling cost in our part

1 of New York State is today conservatively 27 cents per hundred-
2 weight so, even after allowing the transportation credit of
3 ten cents per hundredweight of milk derived from Section
4 1002.55 of Order Number Two, we have a remaining hauling cost
5 of 17 cents per hundredweight of milk.

6 Three; the most recent quotation for 40# blocks at
7 the Green Bay, Wisconsin Cheese Exchange was 85 cents per
8 pound. The average wholesale truckload price during the past
9 several weeks for 40# blocks, as quoted by the USDA Dairy and
10 Poultry News at Madison, Wisconsin for Wisconsin State Brand
11 40# blocks, has been 89 to 93 cents per pound or an average of
12 91 cents per pound.

13 The one-half pound of yield a New York manufacturer
14 loses consequently costs him approximately 50 and one-half
15 cents per hundredweight of 3.5 per cent milk.

16 This, added to the 17 cent cost of transportation
17 previously mentioned, places a manufacturer in our area at a
18 disadvantage of from 67 and one-half cents per hundredweight
19 of 3.5 per cent milk even at today's existing prices.

20 Proposals in this hearing record asking for a
21 Class II price in Federal Order Number Two equal to the
22 Minnesota Wisconsin price for manufacturing milk would have
23 increased the price of our Class II milk \$1.13 per hundred-
24 weight in December, 1973 and \$2.15 in January, 1974.

25 These increases, divided by an average yield of

1 9.25% of cheese per hundredweight of 3.5 per milk, would
2 result to an increased cheese price of well above 12 cents per
3 pound of cheese.

4 An increase of this magnitude at this time can mean
5 only one thing. Very little or no cheddar cheese will be
6 manufactured in the State of New York.

7 In 1973, approximately 700 million pounds of Class
8 II milk was used by cheddar manufacturers in New York State.
9 Most of this milk would have to be channeled into butter-
10 powder plants in this area.

11 Since the present butter-powder formula, which
12 provides only a 48 cent manufacturing allowance, certainly
13 does not enable a manufacturer of these commodities to do so
14 profitably, it might well be a difficult task to move large
15 volumes of Class II milk into butter-powder plants.

16 In addition to this, proposals which suggest that
17 Class II milk for butter-powder plants should also follow the
18 Minnesota Wisconsin price series would certainly make it com-
19 pletely impossible to move large volumes of milk in this
20 direction.

21 A large percentage of butter-powder plants in our
22 production area are owned and operated by cooperative asso-
23 ciations. Many of these plants are presently producing a very
24 limited amount of product or are completely idle.

25 It is difficult to understand why, under present

1 marketing condition producer groups are presenting proposals
2 in this notice of hearing which would result in the movement of
3 large quantities of Class II milk through producer owned
4 butter-powder plants at a very substantial loss to their
5 organizations.

6 It is quite evident that proponents requesting
7 sharp increases in Class II milk prices have given little
8 thought to the fact that hard cheese, both cheddar and other
9 varieties, is the only major dairy product which has, during
10 the past ten years, shown a rapid increase in per capita con-
11 sumption.

12 I will not burden the record with these figures
13 since they are readily available and well known within the
14 industry.

15 It is, therefore, even more difficult to comprehend
16 why producers should wish to seriously curtail or even com-
17 pletely eliminate the one phase of the dairy industry under
18 Federal Order Number Two which provides them with a reliable
19 and ever growing market for Class II milk.

20 The fact that milk producers, along with everyone
21 else in this country, have recently been subject to serious
22 informational pressures is well known.

23 If the milk producer is not able to generate suffi-
24 cient revenues to operate his farm profitably, his only
25 option will be to sell his farm and exert his efforts in some

1 other pursuit in order to make a living.

2 Those who manufacture dairy products have also been
3 subject to these inflationary pressures and, like the dairy
4 farmer, can only continue to bring their products to market as
5 long as they can do so profitably.

6 I would seem that the United States Department of
7 Agriculture should render a decision in this matter in such a
8 fashion that both the milk producer and the manufacturer who
9 takes his product to market can continue to exist.

10 In closing, it should also be noted that the Depart-
11 ments within our Government, such as the Cost of Living
12 Council and the Tariff Commission, have an attitude towards
13 this problem which has been most damaging to milk producers.

14 The large imports of basic dairy products in this
15 country during 1973 surely had a deleterious effect on his
16 income.

17 During late summer and early fall of 1973, the
18 price freeze and Phase IV allowed substantial increases in
19 milk prices which could either not be passed on to finished
20 product prices at all or only in part. This matter also did
21 not improve the welfare of the dairy industry.

22 It may well be that a unified single philosophy on
23 the part of the United States Government can go a long way
24 towards improving the economic position of both the milk pro-
25 ducers and the dairy product manufacturer.

1 This type of philosophy would certainly then mini-
2 mize the need for the extremely drastic actions asked by pro-
3 ponents in this hearing.

4 JUDGE McALPIN: Are there questions?

5 Dr. Mathis.

6 CROSS EXAMINATION

7 BY DR. MATHIS:

8 Q Mr. van Zwanenberg, is the impact of your statement --
9 is it your belief that milk used to manufacture cheese should
10 be available under Federal Orders at a price below the level
11 that is being paid by butter and powder manufacturers in the
12 United States?

13 A I am not sure I heard all of the question, sir.

14 It is very difficult to hear.

15 Q I know it is.

16 My question was: Is it the import of your state-
17 ment to the effect that milk being manufactured into cheese
18 should be available under the Federal Order program at prices
19 fixed by the Federal Order Program which are, in fact, less
20 than the prices being paid in a competitive market by cream-
21 eries in the United States?

22 A Paid by creameries in the United States; where?

23 Q Either in Minnesota or Wisconsin, separately or
24 collectively, or for the United States on an average.

25 A Mr. Mathis, as I clearly stated, in my direct, due

1 to the fact that unfortunately or fortunately, depending on
2 whose side you are on, we have this Farm Board pricing thing
3 which obviously is somewhat expensive.

4 Due to the fact that we are not able to yield the
5 amount of cheddar cheese in New York State that milk manu-
6 facturers in other areas are able to yield, as I explained in
7 my statement, all things being equal, we create somewhere in
8 the neighborhood of 65, 67 cents less revenue from that same
9 hundredweight of milk in New York State that a manufacturer
10 of like product can realize in the Minnesota Wisconsin manu-
11 facturing area.

12 Q Do you have any current data with you, other than
13 data based on information that went into a hearing back in 1961,
14 that would show that, in fact, you do not have the same yields
15 or nearly the same yields as a cheese manufacturer in Wisconsin?

16 A Mr. Mathis, I have a whole briefcase of data of
17 that nature available but, more important than that, the
18 Secretary of Agriculture has reams and tremendous amounts of
19 this information available to him on a daily basis.

20 For instance, the four major manufacturers of
21 cheddar cheese in New York State all operate largely with milk
22 pool under Federal Order Number Two. They are all subject to
23 audit by the Market Administrator's Office of Federal Order
24 Number Two and, obviously, he must know; he being part of
25 the United States Department of Agriculture, the United States

1 Department of Agriculture knows, on a monthly basis, all year
2 long what our yields are.

3 The Department has these figures constantly.

4 In addition to that, the Department sends out --
5 I do not know whether it is a selected group of plants through-
6 out the country or to every major plant in the country -- they
7 send out a card weekly in which they ask you to report to them
8 how many pounds of milk you took in during the week to put
9 into your product and how many pounds of product did you manu-
10 facture.

11 I have been sending these reports back on a weekly
12 basis to the Department here in Washington for more years than
13 I care to remember so it is really not necessary, unless you
14 have some purpose in it -- it is really not necessary for me
15 to relate to you again. I proved this matter.

16 The Secretary has this information.

17 Now, in addition to this, the Secretary must have
18 some very strong awareness of the fact that there are extremely
19 high -- at least high, as compared to New York -- that there
20 are some unusually large yields available to manufacturers
21 of cheddar cheese in the Minnesota Wisconsin -- in the major
22 production areas.

23 When the Secretary, for instance, makes his com-
24 putation for purposes of arriving at a support price, he uses
25 a yield for cheddar cheese of 10.1 pounds per hundredweight of

1 3.5 milk. He must have some purpose in doing this.

2 He must feel that this is a representative number
3 in a very large production area.

4 Q If I can remember all the parts of your answer, I
5 will try to cross you on them.

6 First of all, from the data, Order Number Two key
7 plants, furnished to the Market Administrator each month; is
8 there sufficient data from which he can, in fact, compute
9 yields that you arrive at on your cheese?

10 A I assume -- and you, Mr. Machis, are much more
11 knowledgeable about this kind of thing, I'm sure, than I am,
12 but I assume the purpose of the occasional audits that people
13 from the MA office perform on our records are to verify the
14 utilization of Class XX milk.

15 I would assume, in this verification, they would
16 immediately find totals for specific periods of time of milk
17 received related to the Order they were auditing for.

18 During like periods of time, to see what the amount
19 of price manufactured would be -- to see, in essence, if we
20 had really put this product in; I assume this would be the
21 reason for the audit, would it not be?

22 Q I am not going to answer what the reason for this
23 audit is.

24 A Is this what you are asking me?

25 Q No.

1 What I am asking you is: From the data available
2 to the Market Administrator that Caba Cheese, for example,
3 sends in to him each month, can he, in fact, ascertain the
4 precise or nearly precise yield that you have made during that
5 month on your milk?

6 A I would assume so.

7 Q How?

8 A If he cannot --

9 I do not personally make the report but I do know,
10 of personal knowledge, that reports which go to the Department
11 of Agriculture markets for the State of New York show these
12 figures.

13 What I am saying, Mr. Mathis, is that these are
14 quoted figures, readily available; if anyone wishes to avail
15 themselves of them, they are there.

16 Q But these data are not in the record of this hear-
17 ing, are they?

18 A In the record of this --

19 Yes. They are in the record of this hearing as of
20 the time I read my direct.

21 Q Did you read the yields that you received currently?

22 I did not have a copy of your statement.

23 I am not sure of the time of year.

24 Q They generally do in a big hearing like this.

25 Now, turning to these alleged report cards that the

1 cheese manufacturing industry reports to the Secretary, can
2 you explain to me a little bit more as to what they are: what
3 type of information you are reporting and what the purpose of
4 it is? Where does it go?

5 A They go to the Department in Washington.

6 Q Which Department?

7 A The United States Department of Agriculture. I
8 cannot be anymore specific than that.

9 Q All right.

10 But, you said the Department --

11 A It is something we submit every week of the year;
12 the amount of milk used in cheddar cheese, the amount of pro-
13 duct manufactured from that amount of milk.

14 They have a fix on my yield every week of the year.

15 Q If you were going to try to ascertain your yield
16 that you obtain in cheddar cheese, would you use those data
17 to do it or would you have some more esoteric source for esta-
18 blishing your yields that you obtain?

19 A I am not sure I understand your question.

20 Q What part of it don't you understand?

21 A All of it.

22 Q All right.

23 Taking that little report card that you send in
24 each week, if you wanted to know what kind of a yield factor
25 you got on your cheese that week, would you use that data that

1 you sent to the Secretary or do you have some more esoteric
2 source?

3 By that, I mean, personal, secret to you.

4 A The figures that I personally would use are prepared
5 by my office periodically. They are prepared daily, weekly,
6 bimonthly, monthly and annually.

7 I might add that the milk coming into that plant
8 is measured quite accurately and the product that is being
9 manufactured is being measured quite accurately. If it were
10 not, it would be almost impossible to be in that type of in-
11 dustry, even today.

12 Q Maybe you misunderstood me. Let me ask you the
13 question this way.

14 If the Secretary were to use this report card
15 wherever it might arrive in this giant Department, he could
16 find it and use it to determine what yield was for your opera-
17 tion, would he come up with the same yield as you have ascert-
18 ained by application of your books.

19 A Absolutely.

20 We are using the same numbers.

21 Q This is what I am asking you.

22 I do not you to understand that I am suggesting
23 you are deceiving the Secretary.

24 I am merely trying to ascertain whether he can, in
25 fact, from this rather simplified report form that is sent to

1 Washington, determine true yield for Cuba Cheese.

2 A I am having an awful battle with the echo and my
3 hard of hearing problem.

4 Now, does the Secretary -- the Secretary gets the
5 exact same numbers that I get. They come from the exact same
6 source.

7 Q But, again, to go back to the fact that that data
8 is not in evidence, is it, so there is no way, from the informa-
9 tion that you and your colleagues in the cheese manufacturing
10 business have submitted to him, that it can be used as a basis
11 for making a record here.

12 A I am not an attorney, sir; obviously,
13 Everybody figured that out in a very few minutes.

14 Q Don't put yourself down, now.

15 A I would assume that, when the Secretary makes a
16 decision or a ruling on a matter quite as urgent and important
17 as this one, he would, undoubtedly, avail himself of all perti-
18 nent information that he might have available to him; whether
19 it was information, tables, graphs or what have you that repre-
20 sented the evidence or whether it was material that was com-
21 mented on in a statement.

22 I would think that he would pay some attention to
23 almost anything that was of extreme importance to the matters
24 brought up at this hearing.

25 Now, I will stand corrected if this is not so but

1 certainly I would think that a matter as critical to the price-
2 ing of manufactured milk as the large disparity in yield be-
3 tween two manufacturing areas in which we are trying to price
4 milk on a totally similar basis -- I would think the Secretary
5 would use whatever good, honest, legal information he has
6 available to him, whether I present it in evidence or not.

7 Q Going back to my previous line of questions, Mr.
8 van Zantenberg, with respect to the milk and cheese order as
9 used under the Federal Program, I asked you a question whether
10 or not it was your view that it was proper to price that at
11 a price below -- Let me put it this way.

12 at the butter-powder formula price level.

13 I believe you indicated to me that you thought it
14 was; is that right?

15 A Do that again.

16 Q You believe that it is proper, under current market-
17 ing conditions, to price milk to a cheese manufacturer under
18 the Federal Order Program at a price which, allegedly is what
19 the butter-powder manufacturer can afford to pay for raw milk;
20 namely, the butter-powder formula price.

21 A I am still not totally sure I know what you are
22 asking me but I think I can give you an answer.

23 I think milk should be priced in my operation or
24 operations like mine exactly as I stated in my direct; in such
25 a manner that it will find a market for products that will

pay them and in such a manner that will continue to allow me to operate.

You are a statistician and I think perhaps it would be better if you told us how it would be priced.

All I said in this statement was that if you could have taken orders and milk and priced it by Minnesota Wisconsin price series in December of '73 and January of '74, I could not have handled it.

Q What would have happened?

I presume, from your answer, that you are telling me you would like to price the milk as you did on the basis of the butter-powder formula price; is that correct?

A If I had my choice, I would have you price the milk based upon the Green Bay, Wisconsin report for 40 pound blocks. I tried to include a proposal to that effect in this hearing but, unfortunately, my notice of hearing arrived so late, I was not able to do that because I had less than a day and a half to prepare.

If you are asking me how I would like to see it priced, I would like to see it based upon Green Bay, Wisconsin.

Q But it was priced upon the basis of the butter-powder formula.

A It was based upon the butter-powder formula.

For three months of '72, it was based on butter-powder and, for nine months of '73, it was based on milk.

1 Q For those three months, without going through the
2 statistics, I am sure it was substantially below the price paid
3 by manufacturers in the midwest or, at least, in Minnesota
4 Wisconsin for manufacturing grade A milk.

5 Is that correct?

6 A Yes.

7 Q How would you have felt had your milk been priced
8 on the basis of butter-powder formula price during the first
9 nine months of the year?

10 Would you have been happy with that situation?

11 A I would have felt the same way you felt there
12 during the last three months.

13 Q Do you know to what extent you would have paid the
14 higher price?

15 A Well, in January, there was a difference of 14
16 cents; in February, 22; in March, 11.

17 Do you want me to go on?

18 Q No.

19 It averages about 17 cents, I believe.

20 A I believe this is so. I did not carry that down.

21 Q So what, in effect, you are saying now to the Secre-
22 tary is that it was okay to underprice your milk during the
23 first nine months of the year but now it is still underpriced.

24 A That is not at all what I am saying to the Secre-
25 tary. I think you know that is not what I am saying to the

325a

1 Secretary.

2 I am saying to the Secretary, there is just so
3 much that a manufacturer of cheddar cheese in the State of New
4 York can stand.

5 That is exactly what I said to the Secretary. I
6 think it is in there very plainly.

7 Q Are you aware that cheese manufacturers, on the
8 average, in the Minnesota Wisconsin, pay more than the
9 Minnesota Wisconsin pay price series for their milk?

10 A This may well be so. I know many of them who pay
11 less, too.

12 Q Cheese manufacturers?

13 A Yes, sir.

14 Q But, on the average, prices paid by cheddar cheese
15 manufacturers in Minnesota and Wisconsin are higher than the
16 MW series; are they not?

17 A It has been known to be in certain isolated occa-
18 sions.

19 If you would like to, we can go into quite a de-
20 tailed discussion of that and I can tell you why this is; be-
21 cause they are manufacturing special products that reap more
22 revenue and all this.

23 I would be glad to go into this if you would like.

24 Q Do you know of any month in the last year and a
25 half in which cheddar cheese manufacturing prices, the prices

1 paid by cheddar cheese manufacturers in Minnesota Wisconsin,
2 have gone below the MW series or even at the MW series?

3 A Do I know what?

4 Q Maybe I should precede that question with this one.

5 Are you aware of the prices reported by the Depart-
6 ment of Agriculture as prices paid by various types of manu-
7 facturers published in the Dairy Products?

8 Are you familiar with that information?

9 A Yes, I am.

10 Q Now, can you answer my question?

11 That is what I am basing my question on.

12 JUDGE McALPIN: Gentlemen, I detect a tendency in
13 the two of you to be talking about the same time.

14 If I was the reporter, I would be having an awful
15 hard time.

16 If the witness will wait until the question is asked
17 and if the questioner will wait until the witness finished
18 answering, I think it will help.

19 You may proceed.

20 BY DR. MATHIS:

21 Q Do you understand my question?

22 A I think I do.

23 Essentially, what you are asking is, have there
24 been plants in the past year and a half -- cheese manufactur-
25 ing plants -- who have paid above the Minnesota Wisconsin

327a

1 price.

2 Yes, there have been. There are any number of plants
3 in the Minnesota Wisconsin -- I assume we are talking about
4 cheese plants now -- in the Minnesota Wisconsin area who are
5 making, for instance, stirred curd barrels for the processing
6 industry in extremely high volume with extremely low labor
7 cost and extremely, generally, high moisture and high yielding
8 product which creates revenue for the operator far beyond those
9 experienced by a cheddar cheese plant, perhaps, who manufac-
10 tures.

11 Because of these matters, yes, some of these opera-
12 tors undoubtedly have paid above Minnesota Wisconsin prices.
13 There are also operators who have been able to pay above
14 Minnesota Wisconsin prices for the reason that, beyond the
15 fact that they are operating a cheese plant, they are operating
16 a fluid milk business. They are operating an A deck and a B
17 deck in this operation.

18 During times of short supply, they are sending
19 substantial amounts of the milk from the A deck into Florida
20 and Georgia, if you will, at reasonably good revenues.

21 Part of these revenues seem, somehow, to find their
22 way back into their purchase cost of feed line.

23 We can go on forever talking about what plants in
24 Minnesota Wisconsin are paying. We have to talk about why
25 they are able to pay them and where do these revenues come

1 Q Mr. van Swenenberg, do you know, of your own per-
2 sonal knowledge, that they are, in fact, taking the excess,
3 quote, unquote, revenues out of the fluid milk sales to
4 George and Florida and transferring that to the E operation
5 and artificially inflating the Grade B milk values in the mid-
6 west?

7 Do you know this?

8 A Mr. Mathis, if you are asking me, have I audited the
9 books of those corporation; no.

10 I will tell you this. I spent a great deal of my
11 working life in the midwestern United States and if, having
12 knowledge of this sort of thing is what you are asking me; yes,
13 I do have knowledge of this and of everything I have told you
14 in the past few minutes.

15 I have knowledge with the -- of these people. If
16 you ask me, have I audited their books; no, I have not, but I
17 do know that these things are going on.

18 Q I am merely trying to ascertain whether or not you
19 know this because someone here in this room suggested to you
20 that this was happening or whether you, in fact, knew this, of
21 your own knowledge by your association directly.

22 A Yes; absolutely.

23 Q You have answered that question.

24 Can you explain to me why a prudent cheese manu-
25 facturer, a good operator -- what economic incentive does he

1 have to use his excess revenues that he earns from selling milk
2 in Georgia to artificially inflate the cost of his milk in
3 the Grade B market? I just do not seem to be able to put that
4 together.

5 What economic incentive does a proprietary cheese
6 operator have to do that?

7 I should think he would have an incentive to pocket
8 it.

9 A Two things.

10 Generally, the operators I am talking about are
11 cooperative associations so discussion of profits becomes a
12 different matter altogether.

13 Q Explain that before you go on.

14 A The second thing, as you and I both know; there is
15 a great shortage of cheddar and hard-type cheese in the
16 country today or, if they are badly depleted, and there is
17 a rather sharp competitive situation in the field; particularly
18 in the Minnesota Wisconsin area for manufacturing grade milk.

19 Q So, really, it is likely, is it not, that it is
20 competition for that Grade B milk by cheese manufacturers that
21 is pulling up the price due to the demand for cheese and the
22 developing shortage of supply?

23 A It is competition to this extent: As I have already
24 said, there seems to be an ever increasing need.

25 Now, whether, when he adds this extra incentive for

1 his Grade B milk, he is doing so profitably, I do not know.

2 It may very well be that he is not doing so profitably.

3 Q I am concerned here because it seems that what you
4 are saying to us is that you cannot compete with the midwest
5 cheese industry if you have to pay the average price that is
6 reported as having been paid for all manufacturing grade uses
7 out there.

8 What I am trying to find out from you is how does
9 this square with the fact that your competitors here; namely,
10 the cheese manufacturers; are paying more than that for their
11 milk? Why is it that you could not pay the MW series for your
12 milk and still come out?

13 A The MS series during which month?

14 Q Any month.

15 A Do you want to talk about January, 1974?

16 Q Well, I do not mind but I prefer, for the sake of
17 this record, that we talk about, perhaps, December when the
18 Secretary has available to him the prices paid for cheese
19 manufacturers.

20 A You mean December '73?

21 Q December, '73, only because the data is available
22 in dairy products.

23 A In December, '73, the disparity was almost the same
24 between the two as it was in January, '74.

25 Q Excuse me.

1 I am talking now, Mr. van Zwanenberg, about the
2 disparity, to use that term, between the Minnesota Wisconsin
3 pay price series and the average price paid by cheese manu-
4 facturers in Minnesota Wisconsin.

5 A I am not familiar with the average price paid by
6 Minnesota Wisconsin manufacturers.

7 Would you like to inform me about that?

8 I know what the Minnesota Wisconsin price was. Now,
9 what is the average price paid by cheese manufacturers?

10 Q It is derived from the data available in Dairy
11 Products.

12 A I do not have this material available in front of
13 me.

14 You asked me if I was aware of the existence of
15 those documents earlier in your cross and I said yes, I was,
16 but I do not have them available in my briefcase now.

17 Q I thought you indicated that you were aware of the
18 fact that the prices paid, as reported in these documents --
19 paid by cheese manufacturers were higher than the MW series?

20 If that is not the case --

21 A I think I answered you question why that might
22 perhaps be.

23 I have also pointed out to you why I cannot pay
24 prices like that.

25 JUDGE McALPIN: Gentlemen --

1 DR. MATHIS: I am through, Your Honor.

2 JUDGE MCALPIN: All right.

3 Thank you.

4 Mr. Toomey.

5 BY MR. TOOMEY:

6 Q For what period of time have you been engaged in
7 the manufacture of cheddar cheese?

8 A I have been engaged so for approximately 23 or 24
9 years.

10 Q You indicated that your travels take you a consider-
11 able amount of the time to the midwest.

12 Are you generally familiar with the process, cost,
13 and so forth involved in the manufacture of cheddar cheese in
14 the country?

15 A Yes, sir.

16 Q Are you also familiar with the cheddar cheese busi-
17 ness in New York State, other than your own operation?

18 A Quite.

19 Q You indicated, through the time that you had been
20 engaged in the cheddar cheese business, you had available to
21 you, I assume, the kind of figures which -- from which yield
22 calculations can be made.

23 Is that correct?

24 A Yes.

25 Q On page two of your statement, sir, the very last

1 paragraph, you make an assumption of an average yield of 9.25
2 pounds of cheddar cheese per hundredweight of 3.5 per cent milk.

3 In your experience and knowledge of the industry,
4 do you consider this to be a reasonable assumption of the
5 yield in New York State?

6 A It has been up until recently.

7 I would say up until perhaps 60 or 80 days ago.

8 Q But, in any event, over the period of time in which
9 you could get a really good sample, you feel that that would
10 be --

11 A I feel that would be acceptable. I could live with
12 that for the sake of this hearing.

13 JUDGE McALPIN: Further questions?

14 Mr. Cochran.

15 BY MR. COCHRAN:

16 Q Are you aware that the price for milk that is used
17 in cheddar cheese under the midwestern milk orders, particularly
18 the Chicago Order; that milk has been priced on the basis of
19 the Minnesota Wisconsin series price for many years?

20 A Yes. I am aware of that.

21 Q Your plant is in the New England-New York area; is
22 that correct?

23 A Order Two.

24 Q Would you say that the general area in which your
25 plant is located and the midwestern area around Wisconsin

1 Minnesota are the two principal cheese production areas in the
2 country?

3 A There are others of equal importance -- not of
4 equal importance to Minnesota Wisconsin, but of equal import-
5 ance to New York.

6 Q Would you say that the Minnesota Wisconsin cheese
7 production facilities represent a larger volume or greater
8 quantities than that of New York?

9 A On a per plant basis or in total, sir?

10 Q In total.

11 A In total, very definitely.

12 Q What are the other hard cheese or American cheese
13 production areas?

14 A There is a material amount of cheddar cheese made in
15 Missouri, Iowa, Illinois, Kentucky, Tennessee. That about
16 covers it -- well, Oregon.

17 Q Are you aware that the Federal Orders in the
18 Missouri -- Federal Orders that control the Missouri, Indiana,
19 Illinois --

20 A No.

21 I have no great working knowledge of those, sir, and
22 I did not refer to any of those in my statement.

23 Q No, sir, but you have referred to them.

24 I just wanted to acquaint you with the fact that
25 the Federal Orders in those areas also price cheese milk on

1 the basis of the Minnesota Wisconsin series.

2 A Yes, sir. I am aware of that.

3 To some extent, I am also aware that cheese yields
4 in Kentucky and Tennessee are even higher than those in
5 Minnesota and Wisconsin so they are eminently more capable than
6 we are of paying those prices and even more capable than those
7 of Minnesota and Wisconsin.

8 Q Could you tell me the circumstance that brings
9 about the lesser yields in your area?

10 A The difference in yield between different areas of
11 the country?

12 Q Yes.

13 A Yes.

14 It has something to do with the fat relationship in
15 hundredweights -- fat to casein relationship -- the higher re-
16 lationship of fat to casein, the higher yield you will return.

17 Q Could you give me a figure, say, for such yield;
18 whatever basis you put that on in the Wisconsin area and in
19 the New York area?

20 A Can I give you a representative figure in the
21 Wisconsin area?

22 Q I assume there is some numeric expression for the
23 term "yield", as you use it.

24 Is that correct?

25 A Yes.

1 Q What is that yield figure for the Wisconsin area
2 and what is that yield figure for the New York area?

3 A I will give you what I used in here.

4 Q I know what you used.

5 I want to know what it is.

6 A I used 9.25 for New York. I used 9.75 for Minnesota
7 Wisconsin.

8 The difference, in essence, is greater than that.

9 In answer to one of the questions posed to me
10 earlier, the Secretary, when figuring support prices, gener-
11 ally cheese is at the yield of 10.1.

12 Q Is there any indication to you that the cheese
13 plants in Wisconsin are on a wholesale scale going out of
14 business because they pay for the milk going into the cheese
15 on the basis of the Minnesota Wisconsin series price?

16 A I have no knowledge what the reason for it is, sir.

17 I do know, however, that the cheese plants in the
18 Minnesota Wisconsin area are closing their doors at an extremely
19 rapid pace and have been doing so for the past two or three
20 years.

21 The smaller ones -- I might add --- the smaller ones
22 are going out of business and the larger ones are getting
23 larger. I do not care to battle with you over what the reason
24 for that was.

25 Q Is that not rather typical of the commercial world?

1 that the small plants with small volumes in any alignment are
2 going out of business?

3 A It is rather typical but I suspect that, perhaps,
4 the magnitude of the milk price might possibly have been
5 attributed to the demise of some of these smaller plants.

6 Q You say you expect so.

7 A As I said, I am not an expert on this and I want to
8 make it clear that I am not.

9 Q Are you indicating to me that the Federal Order
10 price for milk going into hard cheese should be on a uniform
11 basis throughout the Federal Orders?

12 A Throughout the country?

13 Q Yes.

14 A If the Secretary would decide to give some thought
15 to the economic difference and have some adjustment built into
16 the structure, then I would agree; but, if he says, you must
17 have Minnesota Wisconsin and no transportation in the Minnesota
18 Wisconsin area at a yield of nine and three quarters to ten
19 pounds per hundredweight and you must pay Minnesota Wisconsin,
20 plus transportation, at a yield of nine and quarter, then my
21 answer is no.

22 Q If I understood your earlier testimony, the magni-
23 tude of transportation that you --

24 A I did not say anything about the magnitude of
25 transportation.

1 Q I thought you described it as 17 cents per hundred-
2 weight.

3 A Yes, but I did not use the word "magnitude".

4 I know, in my final sentence on page three, is
5 states "an increase of this magnitude" and that is the only
6 place in my testimony where the word "magnitude" appears.

7 It was the total increase.

8 Q Excuse the word "magnitude" but the amount that
9 you are talking about is 17 cents per hundredweight.

10 A The difference in transportation?

11 Q Yes.

12 A That is correct, sir.

13 Q That is per hundredweight of milk?

14 A Per hundredweight of milk which, I might add, is in
15 excess of the cent and three quarters per pound of cheese.

16 Q Do you know what \$1.29 amounts to in terms of a
17 pound of cheese? Can you give me that?

18 That is the difference between the price you want
19 to pay for cheese and the price that is paid in the Wisconsin
20 area.

21 A It makes almost 14 cents per pound of cheese, if
22 you are making it in New York on a 9.25 yield; 13.94 to be
23 exact, 13.95.

24 Q On that basis, you would be buying your milk on
25 the basis of a pound of cheese about 12 or 13 cents cheaper

1 than your --

2 A Considerable not, Mr. Cochran.

3 We have been down that route several times now
4 and I think you made the same comment yesterday.

5 It is not 13 or 14 cents a pound cheaper. It is
6 not even half that much cheaper.

7 Q I believe that your plant is not regulated by a
8 Federal Milk Market Order?

9 A The milk I receive -- 85 per cent of it is regulated
10 by Federal Order Number Two.

11 Q But your plant is not regulated by Federal Order
12 Number Two?

13 A No, sir.

14 Q Is all the best milk of Grade A quality?

15 A Yes, sir.

16 Q Does milk of Grade A quality add something to the
17 quality value of the cheese?

18 A It is certainly not injurious to it because I have
19 used nothing but Grade A milk for so many years I would really
20 have to think back quite a way.

21 Q You like to use about 85 per cent of your total
22 volume that way, do you not?

23 A Pardon me, sir.

24 Q Apparently, you have some preference for the type
25 of milk --

1 A No, sir.

2 Everything I buy is Grade A, regardless of where it
3 comes from.

4 Eighty-five percent, approximately, of my milk comes
5 from Order Two. The balance comes from State Order 127 or 129,
6 perhaps elsewhere, but it is all Grade A.

7 MR. COCHRAN: That is all I have.

8 JUDGE McALPIN: Any further questions.

9 MR. PALMER: I have one or two.

10 BY MR. PALMER:

11 Q You mentioned the Green Bay cheese price and I was
12 just wondering, sir, if the Green Bay cheese price had been
13 in effect, say, for the month of December, would that have
14 resulted in a higher or lower Class II price in New York than
15 the Class II price based on --

16 A What you are asking me is, what would our reaction
17 be if the Class II milk was based on Green Bay market.

18 The price of our raw material would be based upon
19 the product we sell. The economic motives would be parallel
20 to our day to day operation.

21 Q I am sure you have made some computations as to
22 what your pricing situation would be in prices you would
23 actually pay.

24 What I was wondering was, comparing the Class II
25 prices that you now have under your New York Order in which,

1 let us say, for the month of December, butter-powder formula
2 was the mover, would the Class II price have been lower, higher
3 or the same if that Green Bay price had been the mover?

4 A It would depend upon what type of formula you would
5 apply to Green Bay.

6 You see, we have no such formula now. I tried to
7 propose it and I was, unfortunately, too late.

8 If you would like to give me an idea of some
9 formula you would like to apply to the Green Bay market, --

10 Q No, sir. I am not an Economist.

11 A Well, there is no such formula in existence now.

12 Q How would you utilize the Green Bay prices?

13 A I would propose a Class II price structure on the
14 Green Bay market. I would propose an average of 40 pound
15 blocks for them on Green Bay, Wisconsin and I would multiply
16 that by an economic mover being yield and, in my case, I would
17 recommend 9, decimal, 25.

18 We would have to have some sort of minus figure for
19 manufacturing costs.

20 Q If you used 9.25, you must have made some calcula-
21 tions, have you not?

22 A Oh, absolutely; I have made some calculations
23 based upon the proposal that I tried to interject here.

24 Q Based upon your proposal, would the Class II price
25 for the month of December, 1973 have been lower or higher than

1 it was?

2 A The proposal that I sent to the Secretary for
3 Green Bay, Wisconsin was 2 and one half cents, plus 9.25
4 minus 65 cents manufacturing allowance and, in December, 1973,
5 that would have returned 46 cents a hundredweight more to
6 producers.

7 Q Is it your feeling that the Class II price for
8 the month of December was lower than it should have been?

9 A I was afraid, sooner or later, someone would ask
10 me that.

11 I would have to admit that, during the past three
12 months, manufacturing prices of milk have been somewhat more
13 advantageous than we have known them in the past.

14 Q You used a 9.25 yield figure.

15 I think that you stated earlier that the Secretary
16 used some other computations; a 10.1?

17 A That is correct, sir, for the purpose of establish-
18 ing price support for cheese.

19 Q If, in your calculations the 10.1 was substituted
20 for the 9.25, would that result in a higher or lower Class II
21 price?

22 A It would be just as hairy as the proposals we are
23 discussing now.

24 Q You would be no better off than the ones these
25 fellows are suggesting if they use the Minnesota Wisconsin

1 price.

2 A Perhaps worse.

3 MR. PALMER: Thank you.

4 JUDGE McALPIN: Are there other questions?

5 BY MR. ARMS:

6 Q In regard to the average yield factor you mentioned,
7 that is an annual average, as far as your operation is con-
8 cerned?

9 A That is true.

10 Q Do you find, sir, that at this time of year, your
11 yield has dropped quite a bit in relation to that average?

12 A Normally, I would say yes.

13 February, March, quite often it would be below
14 average.

15 Q How much does it drop?

16 A I saw one recently under nine for a period of two
17 weeks.

18 Q In your listing of states where substantial cheddar
19 manufacture is undertaken, would you agree that Vermont might
20 also --

21 A I am terribly sorry about that, sir.

22 I realized, when I got through, I left out a couple.
23 My apologies.

24 Q In your statement, you called for the following --
25 if you will bear with me, I will restate it.

1 In your statement, it would seem that the United
2 States Department of Agriculture should render a decision in
3 this matter of such attraction that both the milk producer and
4 the manufacturer takes his products to market and can continue
5 to exist.

6 I would just like to ask you what you mean by
7 "decision". Do you mean a recommended decision on which you
8 can offer data and arguments or do you mean, in view of the
9 fact that this is an emergency hearing, that you feel the
10 Department should go for an immediate, final decision?

11 A I would like to think that I used the word "deci-
12 sion" in a blanket manner, be it emergency, long-term or what-
13 ever.

14 Q So you are not taking a position that, in this hear-
15 ing, you are opposed to or are in favor of --

16 A Oh, yes; very definitely.

17 I said, in my statement, that the fact is I am
18 opposed.

19 JUDGE McALPIN: Mr. Zwanenberg, if you will let him
20 finish his questions, first.

21 MR. ARMS: I believe, Your Honor, I did finish the
22 question.

23 JUDGE McALPIN: State your question again so we can
24 have it on the record.

25 MR. ARMS: I would like to take it in steps.

1 BY MR. ARMS:

2 Q Are you aware, sir, that this hearing notice states
3 that they will be receiving evidence as to whether this is an
4 emergency hearing?

5 A Yes, sir.

6 Q Do you feel that the economic conditions are such
7 that it warrants emergency treatment and the avoidance of a
8 recommended decision?

9 A I do not, sir.

10 MR. ARMS: Thank you very much.

11 JUDGE McALPIN: Other questions?

12 Mr. Cochran.

13 BY MR. COCHRAN:

14 Q You are not subject to any Governmental regulation
15 attaching a price on your cheese, are you?

16 A At the moment?

17 Q Yes, sir.

18 A I cannot tell you with any great authority because
19 it is not my field but I believe perhaps we are still under
20 some economic regulation; yes.

21 Ours is an organization of over 60 employees which
22 puts us in a classification that I believe still has us under
23 some price regulations.

24 Q Do you ever charge for your cheese a price higher
25 than the Green Bay Exchange price?

1 A Do we get -- Do we receive more than Green Bay?

2 Q Yes.

3 A Yes, just like everyone else, we do.

4 Green Bay is the ruling price. There are premiums,
5 there are assembling fees, there are transportation costs, the
6 same as you have out in Minnesota Wisconsin.

7 Q Currently, about what is the difference between your
8 selling price and the Green Bay price?

9 A I am not sure --

10 I am not sure, Judge, that I have to answer this.

11 Do I?

12 JUDGE MCALPIN: You do not have to answer.

13 THE WITNESS: It is a matter of a confidential nature.

14 You are not going to provide me with what the premiums are of
15 Lake Dairy, for instance, or Richmond Center or any of the
16 various manufacturers in the midwestern area and I am not at
17 all sure I need answer that question.

18 Like I told you, I get premiums for quality. Out
19 your way, you get premiums for moisture, you get assembly
20 charges, you get transportation charges and I think that is as
21 far as I care to delve into the subject.

22 I think the rest of the information is privileged.

23 BY MR. COCHRAN:

24 Q You just do not want to tell me?

25 A That is right. Exactly.

1 If we are going to sit here and start comparing
2 prices, it is really a little silly.

3 Q I was only wanting it in relation to the Green Bay
4 price but if you do not want to give it --

5 JUDGE McALPIN: Let's not argue about whether he is
6 or is not.

7 He said he is not and that is the end of that.

8 Any further questions?

9 MR. COCHRAN: That is all I have.

10 JUDGE McALPIN: Any further questions?

11 Mr. Arms.

12 BY MR. ARMS:

13 Q Just a few more questions.

14 You stated that you are quite familiar with the
15 operations of the plants that are under or that comprise the
16 Minnesota Wisconsin group.

17 Can you tell us, if you know, whether the operations
18 of the plants that are under the Minnesota Wisconsin series;
19 whether or not they are audited?

20 A I have no knowledge. That is one phase of the
21 atmosphere that I am not too familiar with, sir.

22 I would assume that the State of Wisconsin must
23 audit them the same as -- markets does in New York.

24 Q Can you tell me how many plants, to your knowledge,
25 go into making up the Minnesota Wisconsin series?

1 JUDGE MCALPIN: We went very deeply into that, Mr.
2 Arms, at another stage of this hearing. It has been indicated
3 what plants are used and the information concerning them is
4 confidential and we are not going to go into it again to try
5 to find out who they are, what they do or how much they cost
6 or anything.

7 MR. ARMS: I will change this line of questioning
8 just to ask one simple question.

9 BY MR. ARMS:

10 Q Do you, sir, have a great deal of confidence that
11 the prices quoted and paid under the Minnesota Wisconsin
12 series is a reliable, accurate price?

13 A I most assuredly do not, sir.

14 MR. ARMS: Thank you.

15 JUDGE MCALPIN: Further questions?

16 Mr. Plumb.

17 BY MR. PLUMB:

18 Q Mr. van Zwanenberg, I believe I understood you to
19 say that you wanted the -- that the Secretary used, as a yield
20 factor, 10.1 on cheese in the support program.

21 A In computing cheese prices for the support prices.

22 I had a bulletin in my briefcase to that effect.

23 Q I believe I understood you to refer to that yield
24 factor in connection with 3.5 per cent butterfat milk.

25 Exhibit 17 would indicate that yield factors for

349a

1 milk tested at 3.67 per cent.

2 Was Exhibit 17 the one you are referring to?

3 A You are right, sir. I stand corrected.

4 It is still a pretty nice yield, though.

5 MR. PLUMB: Thank you.

6 JUDGE McALPIN: Further questions?

7 Hearing none, thank you, Mr. van Swanenbergh.

8 Whereupon, the witness, Nico van
9 Swanenbergh, was excused.

10 JUDGE McALPIN: I have listed here another request
11 to talk in opposition to the proposals that have been given by
12 Mr. Hammerman and Mr. ^{Miller} Smith. It seems they have been down
13 through the exits

14 Does anybody here want to speak for or on behalf of
15 Mr. Hammerman and/or Mr. ^{Miller} Smith?

16 I hear none.

17 Is there anyone else, now, who wants to speak,
18 either in reference to a modification of or in opposition to
19 proposals number one, two, three, four, five, ten, or eleven?

20 MR. WILDASON: Judge, I would like to speak in
21 opposition. I would be willing to do it now; however, if you
22 would be willing to take me as a witness on Monday, I could
23 have my material better prepared and do a better job.

24 JUDGE McALPIN: I think everybody here would like
25 to see you better prepared.

19

1 New York -- we have a series of witnesses, Mr. Wiles and
2 myself are here with 6 or 7 witnesses. We were originally
3 to put Dr. Stewart Johnson on first. We would like to put
4 Mr. Roberts on first and the statements may be slightly out
5 of order, but I think they can be handled.

6 JUDGE MCALPIN: All right, sir, you are ready and if
7 you are going to control their presentations, you may come
8 up and have a hearing chair.

9 MR. CHERNOFSKY: Mr. Wiles will do that.

10 Whereupon,

11 EDGAR J. ROBERTS

12 having been duly sworn by the Chief Administrative Law Judge,
13 was called as a witness herein, and was examined and testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. WILES.

17 Q Mr. Roberts, would you give your full name and
18 address and by whom you are employed and in what capacity?

19 A My name is Edgar J. Roberts. I am employed by
20 the Cooperative Marketing Agency, Post Office Box 129, Syracuse,
21 New York, 13206.

22 I am presently charged with the duties of the
23 Executive Vice President and the Executive Officer of
24 that company.

25 Q What composes the membership of Cooperative Marketing

351a

Agency?

A The Cooperative Marketing Agency is composed of certain operations that were formerly operated by the dairy cooperative and by operations formerly owned and operated by Northeast Dairy Cooperation, Federation, or Nedco.

Q Is all of the physical operations operated by Nedco and Dairylea which related to the initial handling of milk, the price of which was regulated under Order 2, came within the purview of responsibility of CMA, is that correct?

A That is correct.

Q Do you have a statement that you would desire to enter into the record at this time?

A I do.

Q Would you proceed with it.

A This statement is in support of the retention of the butter-powder ^{formula} ~~number~~ in Federal Order No. 2.

The purpose of this testimony is to demonstrate that retention of the butter-powder snubber in Sec. 1002.50 a(c) for milk made into butter and skim milk powder is necessary to preserve orderly marketing and to obtain the highest returns to producers on any realistic basis.

This conclusion is based on the following analysis of the operations of Cooperative Marketing Agency, Inc. (CMA), and its parent organizations, Dairylea Cooperative, Inc., and Northeast Dairy Cooperative Federation, Inc. (NEDCO).

21

1 CMA is a principal handler under Order 2 engaged
2 in marketing milk for the member producers of Dairylea and
3 NEDCO, two of the three principal dairy cooperative associa-
4 tions under Order 2. CMA's marketing activities include the
5 control of farm pickup and hauling of members' milk to market,
6 operation of reload stations and milk manufacturing plants
7 in the country, and sale of milk in tank truck lots to handlers
8 in the marketing area and elsewhere for both Class I and Class
9 II uses.

10 In this capacity CMA performs a large share of the
11 necessary Class I balancing service for the huge Order 2 market
12 by supplying numerous fluid milk distributors their Class I
13 milk as they need it and manufacturing reserve milk, both
14 on week-ends and throughout the flush production season into
15 butter and powder.

16 CMA began operating April 1, 1973. It is owned
17 jointly by Dairylea and NEDCO and operates under the direction
18 of a Board of Directors consisting of certain producer-member
19 directors of Dairylea and NEDCO.

20 For several years, prior to April 1, 1973, Dairylea
21 had operated milk manufacturing plants at Ogdensburg, Vernon
22 and Horseheads (all in New York State) and NEDCO had operated
23 milk manufacturing plants at Oneida, N. Y. and at Middlebury
24 Center and Galeton in Pennsylvania. The ownership and
25 operations of five of these plants was turned over to CMA on

q22 1 April 1, 1973 for continued operation under centralized
2 direction.

3 The five CMA manufacturing plants serve as balancing
4 facilities. CMA sells tailored milk supplies and full
5 supplies of milk to other handlers. What is left over is
6 manufactured in CMA's own plants. A large proportion of
7 annual supplies for CMA manufacturing are seasonal and week-end
8 surpluses, leaving the plants with steep variations in volume
9 of milk manufactured; both seasonally and day-to-day.

10 These plants are quite efficiently operated consider-
11 ing their age and size and highly variable volume of milk
12 manufactured. Four of these plants (Oneida, Ogdensburg, Middle-
13 burg Center, and Galeton) use a major portion of their milk
14 in making butter and powder. The Vernon plant in recent
15 years has manufactured more than half of its milk into powder,
16 but makes no butter.

17 Cost of butter-powder operations, 4/1/72 through
18 3/31/73.

19 For the 12 months ending March 31, 1973, the last
20 year under Dairylea and NEDCO's direct management, these
21 four butter-powder plants had operating costs of \$2,627,950.
22 for manufacturing 497.9 million pounds of milk, or \$.528
23 per hundredweight. Not included in this cost is any expense
24 incurred in hauling milk to these plants; shrinkage in
25 processing, shipping finished products from these plants to

23 market, debt service (interest), sales expense or central
2 office overhead or outside warehousing.

3 I would add to this statement or the market
4 administrator assessment.

5 In addition, cost of containers, bulk butter boxes
6 and powder bags, cost an equivalent of \$.035 per hundred-
7 weight of milk, for a total of \$.563 per cwt.

8 Cost increases since 3/31/73.

9 Increases in a number of cost items since March 31, 1973
10 are listed as follows:

11 Item	Percent 12 increase	Per cwt. of milk 1972-73 (dollars)	Increase per cwt. (dollars)
13 Labor	6.2	.1666	.0103
14 Utilities	1.7	.1039	.0018
Govt. inspection			
15 and grading	10.0	.0038	.0004
Powder bags	13.0	.0251	.0030
16 Butter boxes	18.0	.0099	.0018
Plant repairs	10.0	.0280	.0028
17		TOTAL	.0201

18 The above list, which totals to an increase in
19 \$.02 per cwt. of milk is only a few of the many items of cost
20 in milk manufacturing plants. When added to the 1972-73 total
21 of \$.563 per cwt. shown above, it is obvious that present
22 costs are at least \$.583 per cwt. of milk at the present
23 time.

24 This cost is to be compared with the processing
25 allowance of \$.48 specified in the butter-powder snubber.

24 1 Direct costs are thus at least \$.10 per cwt. higher than
2 reflected under the snubber.

3 In addition, cost of hauling finished products such as
4 butter and powder have increased substantially in the past year.
5 The cost of trucking a 40,000 pound load of powder from Oneida,
6 New York to New York City was \$.87 per cwt. in January, 1974
7 compared to \$.70 in January, 1973, an increase of 24.3 percent.
8 This increase is the equivalent of \$.014 per cwt. of whole
9 milk.

10 Another factor which has increase plant operating costs
11 are the requirements of the U. S. Environmental Protection
12 Agency. At our Horsehead plant we have just recently completed
13 the installation of a water cooling tower and a recycling
14 system at an investment of \$50,000. New powder collectors
15 have also been installed at Horsehead to meet EPA requirements.
16 Additional funds will have to be invested at other locations
17 for installation of new powder collectors to meet EPA require-
18 ments.

19 We sell our butter to wholesale accounts at
20 prices quoted on the New York City butter market and our
21 powder at wholesale in national competition.

22 CMA is the major quarter of 1973, the butter-powder
23 operations of Dairylea and NEDCO comprised 52 to 60 percent
24 of all butter-powder manufactured under Order 2 as follows:
25

25

Butter Manufactured	January	February	March
	(pounds)		
Dairylea & NEDCO	1,423,330	1,047,849	1,272,927
Total Order 2	2,594,030	1,892,232	2,068,948
Percent Dairylea & NEDCO	54.9%	55.4%	59.6%

Powder Manufactured	January	February	March
Dairylea & NEDCO	2,008,805	1,604,950	2,477,850
Total Order 2	3,813,844	3,118,609	4,250,162
Percent Dairylea & NEDCO	52.7%	51.5%	58.3%

CMA continued the manufacture of butter and powder, beginning April 1, 1973, at the plants it took over from Dairylea and NEDCO but at only about 60 percent of the output of the flush season of 1972. Production of butter and powder by months at CMA plants in 1973, and May and November of 1972, was as follows: -- in order to save time, perhaps Mr. Wiles would agree to have this copied in as if read?

MR. WILES: I would be glad to do that. I was wondering if I had sufficient copies of the text to provide this as an exhibit?

JUDGE MCALPIN: All right.

In view of the fact that a copy of the figures have been furnished to the reporter and that it will be possible to copy them in as read, we may, with reference to the ensuing figures in the report, consider that as the consensus and an agreement and it is so ordered.

357a

26	1	<u>Month</u> <u>Butter</u>		<u>Powder</u>	
		1973	1972	1973	1972
	2				
	3	Jan. 1,423,330		2,008,805	
		Feb. 1,047,849		1,604,950	
	4	Mar. 1,232,927		2,477,850	
		Apr. 1,790,127		3,350,598	
	5	May 2,344,195	4,146,000	4,076,750	6,688,000
		Jun. 1,772,561		3,479,500	
	6	Jul. 705,177		1,616,830	
		Aug. 0		0	
	7	Sept. 0		0	
		Oct. 0		0	
	8	Nov. 0		000	995,000
		Dec. 0		625,000	
	9				
		10,316,166		19,250,283	
	0				

THE WITNESS: I would comment, however, that as a comparison that in 1973 butter production was 10,316,166 pounds, powder production, 19,250,283 pounds. Simply to illustrate the fact that these are very sizable operations.

Change in balancing requirements, 1972 to 1973.

The quantity of Order milk made into butter and powder dropped sharply from 1972 to 1973. This is shown in Table 1, for January, February and March and in the decline for CMA shown in the above tabulation. Table 1 also shows the relationship of decline in butter-powder production in receipts from producers.

In January, 1973, total Order 2 receipts of milk from producers and Class II milk were both down about 5.5 percent from January, 1972, but butter and powder production were both down about 30 percent.

In February, 1973, when receipts from producers

26 1 and Class II milk were down 9.5 percent, butter-powder
2 production was down about 50 percent.

3 In March, 1973, when receipts from producers were
4 down nearly 8 percent and Class II milk was down nearly 10
5 percent, butter-powder production was down about 44 percent.

6 This relationship clearly demonstrates that butter-
7 powder is the real balancing operation. The drop in total
8 Class II milk closely approximated the drop in the quantity
9 of skim milk used to produce powder. Thus the change in
10 butter-powder production absorbed nearly all of the total
11 change in Class II milk.

12 When the trend in milk supply is up, instead of
13 down, we find butter-powder production increasing in a compar-
14 able relationship to that shown above for declining milk
15 production. This is the way that butter-powder acts as the
16 balance wheel for the market.

17 Milk receipts from Order 2 producers continued to
18 decline in 1973 as follows: April, 7.7; May, 7.17, June, 7.9;
19 July, 6.2; August, 9.4; September, 9.7; October, 5.2; November,
20 4.1; December, 4.1.

21 This accelerating decline resulted in a tight
22 supply situation by late summer. From August through November,
23 increased demand for Class I from CMA's reserve supply reduced
24 the reserve to the point where no milk was made into butter and
25 powder during these months. Yet CMA had to maintain its butter-

359a

27 1 powder making capacity, not only at the flush season rate of
2 production of 1973, but sufficient for the much larger rate
3 of butter-powder production in 1972. Not until a long time
4 downward trend in milk production is evident would it be
5 wise to reduce the butter-powder capacity that we now have
6 by permanently discontinuing butter-powder operation at some
7 of our plants.

8 Thus, since, 1972, CMA members have been bearing the
9 heavy, but unavoidable, expense of maintaining a greater
10 and greater degree of idle butter-powder capacity. This is
11 necessary if CMA is to continue to perform a major part of
12 the fluid market balancing under Order 2.

13 Changes in Manufacturing Operations under CMA.

14 The objectives of Dairylea and NEDCO in consolidating
15 and centralizing some of their marketing functions in CMA
16 was to improve efficiency in transportation, manufacturing,
17 and bulk milk sales. Considerable progress along this line
18 has been made in each of these three functions.

19 Some of the things we have done in manufacturing
20 include: one, concentration of butter-powder manufacture
21 in the Oneida plant which is the most modern and efficient
22 of the four plants. This has been accomplished by diverting
23 directly from farms to the Oneida plant the considerable
24 volume formerly received at Vernon for powder manufacture
25 as needed.

360a

28

1 Two, the powder drying operation at Horseheads was
2 discontinued in favor of diversion directly from farms to
3 Middlebury Center as needed.

4 Three, manufacturing at Galeton has been temporarily
5 discontinued with the plant being operated as a reload
6 station.

7 Four, conversion to farm bulk cooling and reorganization
8 of farm-to-lant hauling routes has progressed to the point
where a larger proportion of the manufacturing milk plant
supplies in CMA are now directly from farms.

11 Need for retention of butter-powder snubber.

12 The foregoing analysis points up three major operating
13 conditions in CMA that indicate a vital need for retaining
14 the butter-powder snubber on milk made into butter and powder:

15 One, present cost of operating CMA butter-powder plants
16 is more than 58.3 cents per cwt. of milk processed compared
17 to a processing allowance of only 48.0 cents in the snubber
18 formula.

19 Two, while considerable progress has been made in
20 improving efficiency of CMA manufacturing operations, as
21 described above, the savings have not yet been sufficient
22 to overcome the more than 10 cents per cwt. deficit in butter-
23 powder manufacturing noted in point No. 1. The savings from
24 improved efficiency have been absorbed in reducing former losses
25 and meeting inflationary trends.

29

1 Three, even though CMA's butter-powder manufacture in
2 recent months has been reduced as a result of declining milk
3 production of all Order 2 producers, the major balancing func-
4 tion for the total Order 2 market requires the maintenance
5 of these butter-powder plants in stand-by operating condition
6 and at great expense.

7 Mechanics of limiting the butter-powder snubber to Class
8 II milk made into butter and powder.

9 Application of the butter-powder snubber value to
10 just the milk made into butter and powder will require separate
11 application of the skim milk component to milk made into
12 powder and separate application of the butterfat component
13 to butterfat made into butter. This presents no problem under
14 Order 2, or the other Orders included in the Notice of
15 Hearing, because they all employ the butterfat-skim account-
16 ing system which prices all skim milk and butterfat uses
17 separately.

18 The proportion of all Class II skim made into powder is
19 not always the same as the proportion of all Class II butter-
20 fat made into butter. The reason is that the skimm from some
21 milk, the butterfat from which milk is made into butter, is
22 not made into powder, but into other products such as condensed
23 skim or cottage cheese. Conversely, the butterfat from some
24 milk, the skim from which is made into powder, is not made
25 into butter, but sold as cream.

30 1 The percentages of total Class II skim milk used to
2 produce powder and percentages of total Class II butterfat
3 used to produce butter under Order 2 is shown by months for
4 1972 in Table 2.

5 I will submit these at the conclusion as exhibits, Your
6 Honor. Do you want them offered now?

7 JUDGE MCALPIN: I think in the case of these
8 tables and in view of the fact that we are having daily
9 copies of the transcript made and knowing what a problem
10 it is to type tabular stuff and get it accurate, if you have
11 the number of copies, I would prefer to enter the tables
12 as exhibits.

13 MR. WILES: I do have the number of copies. Table
14 1 and 2 attached to each other. Table 1, change from 1972
15 to 1973 receipts from producers, quantity of Class II milk,
16 and milk used to produce powder and butter, Order 2, January
17 to March.

18 The second page is Table 2, attached to it and
19 bearing a similar title.

20 JUDGE MCALPIN: Let the record show that the tables
21 1 and 2 collectively are identified as identified as Exhibit
22 X-18.

23 (Whereupon, Exhibit X-18, was
24 marked for identification.)

25 THE WITNESS: This table shows the butter production

31 1 used 20.0 percent of all Class II skim in 1972, ranging from
2 29.8 percent in June to 11.2 percent in November; butter
3 production used 18.0 percent of all Class II butterfat,
4 ranging from 26.7 percent in June to 9.6 in November.

5 Implications of removing the snubber in favor of
6 the Minnesota-Wisconsin Price Series.

7 Based on recent market price relationships, the
8 effect of pricing all Class II milk on the Minnesota-Wiscon-
9 sin Price would be a severe financial strain on CMA and
10 seriously jeopardize CMA's ability to continue as a major
11 fluid market balancing operation for Order 2.

12 Based on the quantities of milk which CMA used
13 to make butter and powder in 1973, an increase in product cost
14 of \$.47 per cwt. in favor of MW, which existed in October,
15 1973, would have cost CMA \$784,313. At the \$.78 per cwt.
16 difference that existed in favor of MW in November, the
17 annual cost to CMA would have been increased by \$1,301,626.
18 At the \$1.13 per cwt. difference, in favor of MW in December
19 the annual cost to CMA would have been increased \$1,885,690.
20 At the \$1.18 per cwt. difference in favor of MW in January,
21 1974, the annual cost to CMA would have been \$1,969,128.

22 Thus if the most recent market price relations
23 continue, CMA faces a product increase of nearly \$2,000,000
24 per year based on 1973 production of butter and powder.
25 This would force CMA to lend every effort to abandonment of

32 1 its balancing service for Order 2 of manufacturing week-end
2 and seasonal reserve milk into butter and powder. An amend-
3 ment that would force abandonment of this essential balancing
4 service by the largest cooperative balancing operation in the
5 market would likely precipitate a tail spin of disorderly
6 marketing. In such a situation the higher returns of the
7 MW series on all Class II milk, as proposed by some groups
8 at this hearing, would be in serious jeopardy.

9 BY MR. WILES:

10 Q Does that complete your statement, Mr. Roberts?

11 A Yes, sir.

12 Q The cost which you read in the last paragraph or two
13 of your prepared statement, I think it is clear, but I would
14 ask you, are annualized costs as if the spread that you
15 recited for one month were multiplied by 12?

16 A That is correct.

17 Q The testimony which you have just given goes to
18 the latter part of Proposal No. 6 which deals with the
19 exception and as I read from Exhibit No. 6, Proposal No. 6,
20 except that for milk going into butter powder or non-fat
21 dry milk, the butter-powder value shall be used if it is
22 lower than the Minnesota-Wisconsin price?

23 A That is correct.

24 Q I have no further direct examination of Mr.
25 Roberts. I would offer Exhibit 18 in evidence subject to

33 1 any cross-examination with respect to those tables.

2 JUDGE MCALPIN: Without objection, the exhibit
3 identified as X-18 is now received in evidence.

4 (Whereupon, Exhibit X-18, was
5 received into evidence.)

6 JUDGE MCALPIN: Mr. Floanders.

7 MR. FLOUNDERS: May I just ask one question? Did
8 I understand that Exhibit 18 includes the statement or just
9 the tables?

10 MR. WILES: Just the tables.

11 JUDGE MCALPIN: Just the tables. Both were received.
12 And questions?

13 Mr. Hammerman.

14 CROSS-EXAMINATION

15 BY MR. HAMMERMAN:

16 Q Dr. Roberts, you mentioned the plants operated
17 by CMA. Are all of the plants that you mentioned operated
18 all year round?

19 A No, sir, we have indicated that in the latter part
20 of 1973 Galeton operated as a reload station; Middlebury,
21 substantially in the same position; Oneida operated largely
22 as a reload station with some week-end balancing operations.
23 This came about as a result of supplying Class I milk to
24 the market, but the necessity of maintaining these plants
25 in a ready-to-posture, even though they were not being so used.

34 1 Q Mr. Roberts, do you know whether CMA sells milk
2 on a year-round contract basis to Friendship Food?

3 A Yes, sir.

4 Q And also to Pollio Dairy Products?

5 A Yes, sir.

6 Q Can you tell me what would happen if both of these
7 proprietary handlers find that they cannot handle the
8 quantity of milk that they contracted to purchase?

9 A I would assume that CMA would have that volume of
10 milk additionally to either find another buyer for, or in
11 the alternative to use it in our own plants.

12 Q I mention those because in the light of your
13 available facilities, can you tell us what you would do
14 specifically with that milk in those areas?

15 MR. WILES: Your Honor, this type of questioning
16 is full of conjecture. I don't know how valuable it is for
17 the Secretary to have Mr. Roberts what Mr. Pollio might do
18 under a certain set of circumstances. I doubt if he is
19 competent to do that.

20 MR. HAMMERMAN: I am merely asking the witness
21 what CMA would do and not what Pollio would do.

22 MR. WILES: He answered that question.

23 MR. HAMMERMAN: All right. We will go on from there,
24 Dr. Roberts.

25 JUDGE MCALPIN: All right, sir, let's proceed.

35

1

BY MR. HAMMERMAN:

2

Q Turning to your cost analysis, have you been able

3

to make a comparison of cost of operations from the time that

4

the present snubber laws were first adopted in the Order and

5

the current cost?

6

A I loss the last part of your question.

7

Q Have you made a comparison of your increased cost

8

from the time the present snubber clause was first adopted

9

with the current cost? A study similar to the one you show

10

us on page three, but you only go back to March 31st of last

11

year.

12

Have you made a similar study for a longer period?

13

A No.

14

Q Is there any particular reason why you omitted the

15

cost of hauling milk to the plant?

16

A No. No particular reason. It is a cost, but we

17

were showing here the cost of direct operations of the

18

operating plants, which in themselves far exceeded the 48

19

cent allowance under the snubber operation.

20

Q And the figure you arrived at does not attempt to

21

portray your actual cost of operation?

22

A By no means. It does not include, as I have

23

indicated, fat losses, product losses, cost of hauling to

24

the plant, administration, market administrator's assessment,

25

and a dozen other things.

368a

36

1 Q Have you or would you venture to estimate what your
2 overall cost would be had you included those costs?

3 MR. WILES: With or without hauling?

4 MR. HAMMERMAN: With hauling.

5 MR. WILES: Are you asking, Mr. Hammerman, that
6 the witness assume an average of all hauling to all points
7 of manufacture?

8 MR. HAMMERMAN: Yes, actually based on experience
9 of CMA.

10 MR. WILES: I won't object to it if the witness
11 feels he can do that.

12 THE WITNESS: I am not prepared to give you that
13 figure, because I do not have it at this point.

14 BY MR. HAMMERMAN:

15 Q Are you aware of a study made by Dr. Story of
16 Cornell University several years ago on that subject?

17 A I am aware that there was a study made. I do not
18 remember the figures that were contained therein.

19 Q On page seven of your prepared statement and eight,
20 you refer to the implications of the removal of the
21 Minnesota-Wisconsin price series. You make no reference
22 to the implications of the removal and the effect such
23 removal would have, should the ice cream industry find that
24 it can obtain the fats and solids from sources other than
25 liquid milk. Would that add to the burden of the cooperative?

37 1 A Obviously part of the products under Class II are
2 used by the ice cream industry or as cream, condensed milk,
3 and in some cases fluid milk and if they elected to use
4 alternative ingredients that were not produced under the
5 Order, it would obviously result in some of the Class II
6 products going into other end uses.

7 Q And the cooperative associations would undoubtedly
8 handle a good deal of this, is that true?

9 A Repeat the question.

10 Q And cooperative associations of producers would
11 undoubtedly handle a considerable amount of this excess,
12 is that right?

13 A I would think that is a logical answer.

14 Q And, if as you found on page eight of your prepared
15 statement, that your organization loses money in the manu-
16 facture of butter and powder, then under the conditions
17 we just agreed to, the losses would be greater, would they
18 not?

19 A I would agree that that would follow.

20 Q Your proposal, however, would not eliminate the
21 losses you show in your statement, would it? In other
22 words, if your proposal were adopted rather than, let us
23 say, Proposal No. 1 in the hearing notice, that would not
24 off-set all these losses which you project here, is that
25 right?

370a

32 1 A The projected losses in here refer to the
2 difference between butter-powder and Minnesota-Wisconsin
3 and are in addition thereof to that which might occur under
4 simply a butter-powder operation.

5 Q But you are the proponents of Proposal No. 6, are
6 you not?

7 A No, the New York, -England Coordinating Committee is
8 that proponent.

9 Q Which proposal in the hearing notice are you
10 supporting?

11 MR. WILES: His testimony itself offered in
12 supported of Proposal No. 6 to the extent described in the
13 testimony in chief.

14 THE WITNESS: The purpose of this testimony is
15 in support of that part of Proposal No. 6 which is related
16 to the milk used in the manufacture of butter and non-fat
17 dry milk powder.

18 BY MR. HAIGERMAN:

19 Q Then I again ask the question I asked previously.
20 If Proposal No. 6 were adopted, would this eliminate or
21 avoid, let me use the word, "avoid," preferably, the losses
22 which you project on page eight of your statement?

23 MR. WILES: I object to the question. The witness
24 has not used the word, "losses." He has used the word that
25 they would have increased cost and it may result in increased

39 1 losses, but this is a hypothetical example using set figures
2 projected into the future and I think they speak for them-
3 selves.

4 MR. HAMMERMAN: I am willing to restate my question.

5 JUDGE MCALPIN: Please do.

6 BY MR. HAMMERMAN:

7 Q Would the increased cost which you project in your
8 statement be avoided by the adoption of Proposal No. 6?

9 A Yes.

10 Q Wouldn't you be paying an average if the butter-powder
11 snubber and the MW, so won't you avoid just half the increased
12 cost rather than all of them?

13 A No.

14 Q Can you explain that to me, please?

15 A Yes.

16 For milk used in the manufacture of butter-powder,
17 the price would be the butter-powder value.

18 Q Also then to the extent that you would make butter
19 and powder, you would use butter-powder only?

20 A That is correct.

21 Q And do any of the organizations whom you represent
22 make products other than butter and powder?

23 A Yes.

24 Q Cottage cheese, for example?

25 A Yes.

40 1 Q Condensed milk?

2 MR. WILES: In what context, Mr. Hammerman, are
3 you talking about the other entities that he might represent?

4 MR. HAMMERMAN: I assumed he is appearing here for
5 CMA?

6 MR. WILES: That is correct.

7 MR. HAMMERMAN: And I am asking him whether the
8 cooperative associations which are members of CMA make any
9 of the products to which I referred?

10 THE WITNESS: They do.

11 BY MR. HAMMERMAN:

12 Q And if the Minnesota-Wisconsin Price Series were
13 adopted and used exclusively the cost, the manufacture of
14 those products would be increased, is that correct?

15 A Mr. Hammerman, I do not intend to respond to
16 any questions in that line. There will be another witness
17 and that is his part.

18 MR. HAMMERMAN: That is all I have.

19 JUDGE MCALPIN: Are there further questions?

20 Mr. Flounders.

21 BY MR. FLOUNDERS:

22 Q Mr. Roberts, you have had substantial experience
23 in ice cream, have you not?

24 A I, a long time ago, had some awareness of it.

25 Q In the operation of your plants, would one way

41 1 of solving your problem be to raise the price of your butter-
2 powder?

3 A Well, if you operate in a vacuum that is ry
4 nice way of doing it. As I think everyone in this room is
5 aware, that both of these products are sold on what amounts
6 to a national basis. And to attempt to unilaterally increase
7 the price of butter that is being made in anybody's plant
8 by 10, 15 or 20 cents above market price is nice wishful
9 thinking, but it is dog gone unrealistic.

10 Q In other words, you say after this amendment, even
11 if the Proposal 1 is adopted here, that you feel sure there
12 will be butter-powder on the market at substantially the same
13 price itself on the market now.

14 A I cannot answer the question as you have posed it.

15 Q Would you- is it your opinion that if Proposal 1
16 is adopted, which would price everything under these orders
17 at the Minnesota-Wisconsin, is it your opinion that there would
18 be substantial quantities of butter and powder on the market
19 at prices considerably below what you would be able to sell
20 your butter and powder for at a break-even point?

21 A If the relationship of Minnesota-Wisconsin and
22 butter-powder continues as it is, it would not be possible
23 for a plant with a pay price of Minnesota-Wisconsin to
24 manufacture milk into butter and powder and come out whole.
25 So it would be a great pressure to do anything else with that

42 1 milk that could possibly be done. And from where we sit, it
2 does certainly indicate that it would result in a most
3 disorderly marketing condition.

4 Q Do you think that there would be butter and powder
5 on the market at prices lower than you would be able to sell
6 butter and powder?

7 A I don't want to fence with you, Mr. Flounders,
8 but what you sell for and the price that you receive with
9 relation coming out whole are two different things. There is
10 certainly going to be butter and powder made at plants that
11 are not under any kind of Federal order regulation in areas
12 where they have free pay prices and these are not all going
13 to be in Minnesota, Wisconsin. There are a number of other
14 places that there are substantial quantities of butter-powder
15 made in non-regulated plants.

16 Q Then that butter-powder would prevent you from
17 raising your price as high as you might want to --

18 A That is correct.

19 Q -- would also be available to ice cream plants
20 to purchase which are not subject to Federal regulations,
21 is that true?

22 A I would assume so.

23 Q From your considerable experience, would you say
24 that there is in the manufacture of ice cream great
25 substitutability between, say, skim condensed and cream or

43 1 fluid fat and solids and butter and powder?

2 A Many manufacturers make that substitution when
3 the economics dictate it.

4 Q So that an ice cream manufacture whose plant is
5 under the Federal orders we are here discussing, could be
6 at the same disadvantage in competition that you are here
7 complaining about, is that correct?

8 A Will you please read that question back?

9 (Question read back.)

10 BY MR. HAMMERMAN:

11 Q Let me try it again.

12 If there is butter-powder that -- if there is going
13 to be in your opinion, butter-powder available at prices
14 below what you as a manufacturer under this Order of butter
15 powder could afford to sell yourself for, and this butter
16 and powder is available to a non-regulated, non-Federally
17 regulated ice cream plant, then a Federally regulated ice
18 cream plant which was using all products priced at Minnesota-
19 Wisconsin would also be at a substantial disadvantage, wouldn't
20 he?

21 A Yes, sir.

22 Q Are you the witness on the technicalities of the
23 Order or will there be another witness?

24 A There will be another witness.

25 Q My reason for asking, then you do not want to state

44 1 how this will be handled under the Order, whether butter
2 powder will be the end product or traceability or anything
3 like that?

4 A No, sir.

5 MR. FLOUNDERS: That is all I have.

6 JUDGE MCALPIN: Any further questions?

7 Mr. Cochran.

8 BY MR. COCHRAN:

9 Q Your figures that you have placed in the record,
10 do they not indicate a pronounced decrease in the production
11 of milk regulated by Order No. 2?

12 A Yes, sir.

13 Q You mentioned a matter of transportation. Does
14 not Order No. 2 provide, within its terms, a transportation
15 credit with respect to milk directed to manufacturing uses?

16 A I am sorry. I did not understand your question.
17 Want to try it again?

18 Q Yes, sir. I will try.

19 Are you aware that Order No. 2 provides for a
20 transportation credit for milk directed to manufacturing
21 uses?

22 A Yes, sir.

23 Q Now, with respect to this entity, CMA, your state-
24 ment notes that that entity is owned jointly by Darilea
25 and NEDCO, is that correct?

45 1 A Yes, sir.

2 Q Is CMA a corporation or is it something in the nature
3 of a partnership or joint venture participated in by
4 Dairylea and NEDCO?

5 A It is a corporation.

6 Q Then these cooperatives, are they the only stock-
7 holders?

8 A Yes, sir.

9 MR. WILES: Let the record be clear, would the
10 witness accept my statement that it is a cooperative corpora-
11 tion incorporated under the cooperative laws of the State
12 of New York, having two members, Dairylea and NEDCO.

13 MR. COCHRAN: Thank you.

14 BY MR. COCHRAN:

15 Q As a matter of fact, Dairylea and NEDCO have com-
16 bined in this type of operation with respect to -- they are
17 handling and -- with respect to their handling and marketing
18 of milk that goes into manufacturing uses, is that correct?

19 A That is partially correct. It does not include
20 all of the operations of CMA.

21 Q What other operations does CMA have?

22 A The assembly, quality control, sales of milk to
23 customers, either in the marketing area or in some instances
24 in other areas, both for Class I and Class II use. And then
25 the operation of the balancing plants that are required to

46 1 handle the milk that is now thus sold.

2 Q Does that include the principal overall marketing
3 functions that were performed by Dairylea and NEDCO before
4 CMA came into being?

5 A It includes the marketing responsibilities for the
6 operations that I just described.

7 Q Does CMA establish the price of the products
8 manufactured by CMA that are sold to the customers of CMA?

9 A Would you want to try that one again?

10 Q Yes.

11 I would gather from your testimony that CMA manu-
12 factures butter, manufactures powder, non-fat milk powder,
13 and manufactures other products. Does CMA set the price for
14 which it sells these products to its customers?

15 A Yes, sir.

16 Q Then you do have some liberty or choice in establish-
17 ing the price at which your products are priced?

18 A Certainly within the opportunity to sell at competing
19 prices, these determinations are made by CMA sales.

20 Q You mentioned some non-regulated plants that
21 manufacture butter and powder, did you not?

22 A I believe I did.

23 Q Could you tell us about where they are located and
24 something about the volume of their operation?

25 A I don't think I could describe them in total. There

47

1 are many of them located throughout the country.

2 Q You mean throughout the nation as a whole?

3 A Yes.

4 Q Do those plants typically employ milk of manufactur-
5 ing grade rather than Grade A milk?

6 A I would believe they probably employ at different
7 times milk that was Grade A, not Grade A, in some cases possibly
8 buying surplus cream from other plants for churning.

9 Q Then perhaps if they did use Grade A milk, would
10 that be milk that they purchased from Federal order regulated
11 sources?

12 A Not necessarily.

13 Q Would you have any figure as to the rough percent-
14 age of the butter fat and powder that is manufactured in
15 such plants in your immediate area as compared to a corres-
16 ponding figure for the plants operating on Grade A milk or
17 on Federal order milk?

18 A I do not, but within the Northeast area there would
19 be little milk that did not meet requirements for fluid milk.
20 I believe in probably all the states there is some so-called
21 manufacturing milk still remaining, but it is rather small.

22 Q If I understand your proposal or your testimony
23 here, you are advocating the use of the butter-powder snubber
24 only with respect to milk used in butter and powder?

25 A That is the import of my testimony.

48 1 Q Do you know of any product originating in the
2 mid-western area that is preventing your organization from
3 obtaining a higher price for its butter and powder?

4 A Would the reporter read the question?

5 (Question read back.)

6 THE WITNESS: With respect to butter, our basic
7 selling premise is on the basis of New York market. Possibly
8 with some deviation from it, but basically it is that market.
9 What enters into that market to make up that price, I could
10 not tell you.

11 With respect to powder, while there is not a
12 central market such as you have for butter, there are para-
13 meters beyond which you do not get sales, so that you must
14 sell at somewhere in the neighborhood of the going price,
15 whatever that may happen to be, otherwise, you do not have
16 a sale.

17 BY MR. COCHRAN:

18 Q Are you aware that the Federal Order Prices in the
19 Midwest for milk used in Class II uses generally, including
20 butter and powder, is the Minnesota-Wisconsin series price?

21 A I am also generally of the impression that the amount
22 of butter and powder that is manufactured that are regulated
23 plants is relatively small.

24 Q You don't have any information with you as to the
25 quantities of milk price say on the Chicago Order?

49 1 A I do not.

2 Q As utilized in butter and powder?

3 A I do not.

4 Q If your proposal were adopted, do you see where you
5 might have a competitive advantage in the marketing of powder
6 against handlers regulated by the Midwestern orders?

7 A If they in truth are paying Minnesota-Wisconsin
8 as compared to butter-powder, there certainly at this point
9 is a difference. I am not certain that there are butter-
10 powder plants that are operating in that manner. The other
11 think, that with respect to the Midwestern manufacturing
12 plants, these plants are operating generally speaking on an
13 around the year basis, subject to the seasonal changes in
14 milk production, but they are not at all comparable to a
15 balancing plant such as we operate in the Federal Order 2
16 area, where we may, for a period of several months, not
17 manufacture a pound of product.

18 Q Does your organization operate, do you produce
19 any cheese?

20 A No, sir.

21 MR. COCHRAN: That is all I have.

22 JUDGE MCALPIN: Further questions?

23 Mr. Wildason.

24 BY MR. WILDASON:

25 Q I have questions relating to just about three points

1 that I would like to pursue.

2 The first question I thought you were about to volunteer
3 as an estimate of what your total cost of manufacturing per
4 hundredweight would be if you included such things as your
5 ~~strainage~~ ^{shrinkage}, sifting of finished products from plants to
6 market, debt service, sales expense, central office overhead
7 and outside warehousing, market administrator's assessment
8 and so forth, excluding transportation or concentration
9 trucking cost.

10 Would you be prepared to give us an opinion of what
11 your total cost per hundredweight would be?

12 A Sorry, I cannot. And I am not trying to avoid it.
13 It is just as we have indicated in here, we have a new corpora-
14 tion and I am not certain with respect to all of those costs
15 broken down, in a position today to supply that information.

16 Q Thank you.

17 I would not have asked you except I thought you
18 had an answer ready for me.

19 Could I ask you this question: You took these
20 four plants and your total operating expenses and the total
21 numbers of hundredweight of milk and you divided one into
22 the other to come up with this figure that you have, is that
23 correct?

24 A That is correct.

25 Q And in these plants, what is your mix of production

5.

1 In other words, you are making things other than butter and
2 powder at these plants.

3 A Of the plants that were taken, the preponderance
4 of the operation was butter and powder, though there was some
5 manufacture of cream and condensed without going to the final
6 step in either case to butter or powder. So to the extent
7 that the intermediate operations were included in there, and
8 they were, they would have shown a lesser cost, for these
9 operations than if the full operation had been butter and
10 powder.

11 Q Thank you.

12 That was precisely the point I was trying to have
13 you make. That if you had a mix of products, it would
14 certainly be expected that some of the other products manu-
15 factured cost much less to handle the manufacture than butter
16 and powder.

17 A We leaned over a bit backwards to be conservative.

18 Q I know you also have quite a lot of experience in
19 the field of technology and the manufacturing of products.
20 I think you would be the appropriate witness to ask this
21 question.

22 In a plant with equipment that you have, could you
23 or would you be able to, without any substantial increase
24 in equipment investment, manufacture dry whole milk?

25 A Not very well.

52 1 Q There are some technical reasons why you could
2 not do that?

3 A There are.

4 Q In the use of milk solids, whether in the form
5 of milk fat or milk solid, non-fat, do you think there is
6 technologically legally, there are any serious problems in
7 substituting butter and non-fat dry milk in the manufacture
8 of ice cream?

9 MR. WILES: I don't think he testified as to the
10 legal aspects of that as they may exist from jurisdiction
11 to jurisdiction. That is quite complicated.

12 THE WITNESS: May I have the question read?

13 (Question read back.)

14 THE WITNESS: I think that it may be accomplished.

15 BY MR. WILDASON:

16 Q So that you would say that an ice cream manufacturer
17 has, as alternate sources of milk solids and milk solid non-
18 fat, butter and non-fat dry milk?

19 A That is right.

20 Q Would you think that he would be prudent from the
21 standpoint of economics to use some of these products to larger
22 and larger percentages, if, as the differential of cost
23 increased, by using things other than butter and non-fat
24 dry milk?

25 A I would suspect that competitive conditions would

385a

53 be necessary.

2 Q Thank you very much.

3 JUDGE MCALPIN: Further questions.

4 Mr. Hammerman:

5 BY MR. HAMMERMAN:

6 Q I have just one other question, Dr. Roberts.

7 On your tabulation of cost, where do you include
8 the cost of energy, whether it be natural gas or oil to
9 operate your plants?

10 A It is in a direct cost of operations.

11 Q If it is -- is it included in one of the items
12 which you list?

13 A Yes, it is included under utilities and I guess I
14 would have to comment so that you do not have to ask me the
15 question, that the increases that are shown here are quite
16 small as compared to the ones that have come along more
17 recently.

18 Q Do any of your plants use fuel oil?

19 A They do. And to comment on that one, at one plant
20 where we, a year ago, with purchasing oil for about 11 cents
21 a gallon, the cost has now escalated to 20 or 30 cents per
22 gallon.

23 Q Do you use oil at more than that one plant?

24 A Yes.

25 Q Have the costs -- do you use natural gas at any of

386a

54 1 your plants?

2 A Yes, we do.

3 Q Do you know anything about the increased cost of
4 natural gas?

5 A I am not quite as familiar with the actual charge
6 percentage-wise, but I am aware that gas rate structures
7 have escalated also.

8 MR. HAMMERMAN: That is all. Thank you very much.

9 JUDGE MCALPIN: Any questions?

10 Dr.Mathis?

11 DR. MATHIS:

12 Q On page three of your statement, in the tabulation,
13 the far right-hand corner of column, the first number, I
14 believe you read into the record as 0.03. Did you mean to
15 do that?

16 A This is in dollars.

17 JUDGE MCALPIN: Dr. Mathis, I was noticing, too,
18 as he was reading that the points were sometimes not in.
19 I think if you will tell us whether or not the printed amounts
20 are the amounts he intends, because we have agreed that
21 they be copied as they are as if read and so that I am
22 certain that the reporter is going to put them down as they
23 are in this prepared statement.

24 If he might have read the point in a different
25 place and I notice he did on several occasions, but if the

55 1 figure is on this paper as intended, there is no point into
2 going into questioning on him about it. It will be in the
3 record as it is on this paper.

4 DR. MATHIS: That would be perfectly all right
5 with me, Your Honor, except I notice the court reporter did
6 make a notation when he was reading and I was perhaps
7 fearful she had made the changes he was reading it.

8 JUDGE MCALPIN: I think that can be clarified now
9 by stating whether or not the figures as they appear in this
10 prepared statement are the figures as he intend them.

11 THE WITNESS: The figures that are shown in the
12 statement are the proper figures and should be used.

13 JUDGE MCALPIN: That is the way they will appear
14 in the record, Dr. Mathis.

15 DR. MATHIS: Thank you.

16 BY DR. MATHIS:

17 Q On page four, I presume the pounds in that table
18 are product pounds, is that correct?

19 A That is correct.

20 Q Have you done any estimations as to what the
21 product pound manufactured might look like for 1974 after we
22 get through the flush? In other words, do you anticipate
23 a pattern similar to this of 1973?

24 A If the formula of pricing continues in its present
25 manner, then I would think that the new type of experience

56 1 would be encountered. However, if there is a change in Class
2 II pricing, there may be a reluctance on the part of some
3 handlers producing other products to purchase those products
4 on a different price basis. And if that were true, then the
5 pattern as indicated here might be changed substantially.

6 Q In arriving at that answer, are you presuming that
7 during the period in which you had no butter or powder
8 manufacturing during the months of August through December
9 of 1973, and I would correct that, noting that you have, you
10 did make some powder in December, but with only that one
11 correction are you making a presumption that proprietary
12 handlers did make butter-powder during those months?

13 A No, I do not know that they did. What I was saying
14 was there are other products that are being handled by
15 proprietary handlers which we are selling milk to these people
16 for these purposes and if there were a change in the basic
17 formula for Class II, that left them in a different competitive
18 position then. They might have other plans. I cannot at
19 this point reach into somebody else's head and determine
20 what they might do.

21 Q Could you tell me why there are only two numbers
22 for 1972? I am sure there is a logical explanation for
23 that, but it seems to me --

24 A Simply reference points to indicate the difference
25 that had taken place between '72 and '73. And as the

17

1 production declined in Order 2, while it declined in
2 amounts of ten percent or less, that the change in butter-
3 powder production was much more dramatic. I think it simply
4 points up again, as we have indicated that butter-powder in
5 the case of Order 2, is truly a balancing operation and is not
6 directly, with respect to production. It declines much
7 more rapidly as production declines. It escalates much more
8 rapidly as production increases.

9 Q Your reference in the latter part of your answer
10 was with respect to these figures at page four, is that
11 correct? Is that what you were trying to show here on page
12 four? In other words, the utilization within CMA that
13 fluctuates that directly, is that what you are saying?

14 A What I was indicating was that in total a relatively
15 small change in total production relates to a rather large
16 change in butter-powder production, either up or down.
17 If you take the month of May of '72, as compared to May of
18 '73, the production decline was almost 50 percent. Insofar
19 as butter was concerned.

20 But it was a smaller percentage in terms of
21 total production.

22 Q In arriving at that conclusion, did you test any
23 of the other manufactured products, such as cheese or ice
24 cream to ascertain whether or not that same phenomena does not
25 exist?

58 1 A I do not have specific data on that, but our own
2 experience generally indicates that there is not such a
3 dramatic change that given a relatively stable pricing
4 situation, that the change is much smaller.

5 Q Just one final question, Mr. Roberts.

6 Perhaps just for my own understanding, on page eight,
7 Mr. Wiles attempted to clarify how you arrived at some of
8 those cost numbers and I guess he confused me more than he
9 clarified it for me, at least. Looking at the number for
10 October, '73, of \$784,313, was that an annual figure or was
11 that supposed to reflect the monthly cost to CMA?

12 A That simply says that if the difference between
13 butter-powder and Minnesota-Wisconsin were 47 cents on an
14 annual basis, the additional cost that would be related to
15 the products manufactured on an annual basis for the past
16 year would have been that amount of money.

17 Q That is based on the pounds of butter and powder
18 manufactured during 1973 by CMA, is that correct?

19 A That is correct, sir.

20 Q Now, I understand.

21 I believe that is all I have. Thank you very
22 much.

23 JUDGE MCALPIN: Mr. Copeland.

24 BY MR. COPELAND:

25 Q Mr. Roberts, do any of the members of the CMA

59 1 operate plants which produce hard cheese?

2 A Yes, sir.

3 Q And how many plants are there, sir?

4 A One.

5 Q Is that located in Order 2?

6 A Well, it is in the Order 2 production area.

7 Q Does that plant operate at capacity now, sir?

8 A I cannot answer that.

9 MR. CHERNOFSKY: I don't believe that knowledge is
10 within the operation of Mr. ^{Roberts} ~~Rogers~~. Dairylea owns the plant
11 and any answer he may give would be pure supposition.

12 BY MR. COPELAND:

13 Q Mr. Roberts, --

14 JUDGE MCALPIN: Did I hear someone say they could
15 not hear?

16 Mr. Chernofsky was objecting on the ground that
17 this witness does not know the answer to the question,
18 because that is a Dairylea plant and any answer he may give
19 would be supposition. I sustain the objection.

20 BY MR. COPELAND:

21 Q Do you know whether or not there are any new plants
22 either coming on line or about to come on line in the order
23 we are concerned with here which will produce hard cheese?

24 A My understanding is that there is a small Allentown,
25 Pennsylvania, but I do not have personal knowledge of it.

ew60

1

Q Are there any others, sir, in other sections?

2

A Not to my knowledge.

3

MR. COPELAND: Thank you, sir.

4

JUDGE MCALPIN: Any further short questions?

5

Mr. Arms.

6

BY MR. ARMS:

7

Q As a general rule, from your experience in the

8

New York market, does the additional cost of the farm towns

9

own pricing of milk generally exceed the ten cent pool

10

credit on Class 2 that Mr. Cochran asked you about?

11

A Yes, it does, very substantially.

12

Q By how much would you say?

13

A Probably from 15 to 20 cents.

14

Q I would appreciate it if you can, if you could

15

tell us whether or not CMA with respect to the emergency

16

call of this hearing would take a position or takes a position

17

with regard to the skipping of a recommended decision.

18

MR. WILMS: What is that question again? I don't

19

understand it.

20

THE WITNESS: I am sorry, I don't understand it

21

either.

22

JUDGE MCALPIN: I think what he is asking, there

23

is included in the hearing notice that the nature of this

24

hearing includes consideration of whether or not emergency,

25

should taken. He is asking now whether the witness takes any

tw61 1 position with reference to that part of the hearing?

2 MR. WILES: Testimony was not developed with that
3 particular proposition in mind. The witness may answer any
4 way he wants.

5 THE WITNESS: We have not considered that part as
6 a part of this testimony.

7 MR. ARMS: Thank you.

8 JUDGE MCALPIN: Further questions?

9 (No response.)

10 JUDGE MCALPIN: Hearing none, and it now being
11 4:55 p.m. this hearing was recessed until 9:30 a.m.
12 tomorrow morning.

13 MR. WILES: Is this witness excused, Your Honor?
14 I have no further redirect.

15 JUDGE MCALPIN: Having asked if there are further
16 questions and heard none, I appreciate your calling my
17 attention to it. He is excused and we will go to the next
18 witness tomorrow.

19 (Whereupon, at 4:55 p.m. the hearing recessed until
20 Tuesday, February 26, 1974, at 9:30 a.m.)

21

22

23

24

25

1 MR. CHERNOFSKY: Dr. Stewart Johnson, please.

2 Whereupon,

3 DR. STEWART JOHNSON

4 having been duly sworn by the Chief Administrative Law Judge
5 was called as witness herein, and was examined and testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. CHERNOFSKY:

9 Q Would you state your name and address for the record,
10 please?

11 A My name is Stewart Johnson. I am Professor of AGri-
12 culture Economics Emeritus at the University of Connecticut,
13 Storers, Connecticut. I reside at RFD #3, Springhill, Storers,
14 Connecticut.

15 Q And you are testifying on behalf of whom?

16 A The New York-New England Dairy Cooperative Coordin-
17 ating Committee.

18 Q That would be on Proposal No. 6?

19 A That is correct.

20 Q Dr. Johnson, would you give us a brief summary of
21 your education and professional background?

22 A I received a Bachelor's Degree at the University of
23 Wisconsin in 1935, a Master's Degree at the University of
24 Vermont, 1937, a Ph.D, Cornell University, 1941. With the
25 exception of two to three or four years I have been engaged in

395a

1 milk marketing work, since 1934, either in research and teach-
2 ing or in extension.

3 Q Dr. Johnson, do you have a prepared statement you
4 would like to ready today?

5 A I do.

6 MR. CHERNOFSKY: At this time, Your Honor, I would
7 like to offer as Exhibit No. 19 for identification 12 copies
8 of Dr. Johnson's statement, consisting of 18 pages of wording
9 and computation and with three attachments. The statement is
10 entitled, "Class II Price Hearing, Washington, D.C., Februa-
11 ry 20, 1974, Statement of Stewart Johnson, Professor Emeritus
12 of Agricultural Economics, University of Connecticut".

13 The attachments consist of Table 1, entitled, "Make
14 Allowances for Butter-Powder Plants in Minnesota-Wisconsin
15 Area Assuming the Pay Price to Farmers is the Minnesota-Wiscon-
16 sin Manufacturing Milk Price as Reported by the USDA, July,
17 1968-January, 1974".

18 And Table 2, entitled "Butter-Powder Values and
19 Minnesota-Wisconsin prices, and Averages of the Two, February
20 1973-January, 1974". And a two-page letter from the United
21 States Department of Agriculture, dated October 27, 1972,
22 entitled, "Secretary's Memorandum No. 1793 USDA Policy on
23 Cooperatives".

24 JUDGE McALPIN: Mr. Chernofsky, let me suggest that
25 we identify as exhibits the attachments rather than the complete

statement, both in the interest of physical size of the exhibit and the fact that, in so many cases, the statements when read have interpolations or corrections, etcetera.

Whereas, actually the exhibit will not be read into the record, will supplement the statement that is made.

MR. CHERNOFSKY: Fine. Then I would request that the reporter copy the computations that are contained in the statement as though they were read in that particular form.

JUDGE McALPIN: Right. When we reach computations and they include a number of figures, then we will have that copied into the record as if read, exactly as they appear in the statement.

MR. CHERNOFSKY: Very good.

JUDGE McALPIN: Let the record show that Table 1, Table 2 and the Secretary's Memorandum No. 1793 now attached to the written prepared statement of Dr. Johnson are collectively identified as Exhibit X-19.

(The items referred to were marked
for identification as Exhibit X-19).

MR. CHERNOFSKY. Dr. Johnson, would you please proceed with the reading of your prepared statement?

DR. JOHNSON: This statement is presented on behalf of the New York-New England Dairy Cooperative Coordinating Committee, representing approximately 20,000 dairy farmers, some 50 percent of all producers shipping to plants under the

397a

1 Boston Regional, Connecticut, New York-New Jersey, and Middle
2 Atlantic Orders, and also with producers shipping to plants
3 under the Eastern Ohio-Western Pennsylvania Order. It is in
4 support of Proposal 6 in the Notice of Hearing.

5 It is proposed to change the method of determining
6 the Class II price, Class III under Order 36, to a simple
7 average of the Minnesota-Wisconsin price and butter-powder
8 value calculated in the same manner as now under Orders 1, 2,
9 4, 15 and 36, instead of the lower of the two prices or values,
10 except that for milk going into butter and nonfat dry milk,
11 the butter-powder value shall be used if it is lower than
12 the Minnesota-Wisconsin price.

13 To illustrate, the Class II price under Orders 1, 2,
14 and 15 at the 21st zone for January, 1974, before seasonal
15 adjustment, would be an average of \$8.10 and \$6.92, or \$7.51,
16 instead of \$6.92 and the \$6.92, again before seasonal adjust-
17 ment, would apply only to milk used in butter and nonfat dry
18 milk.

19 The immediate problem is that the butter-powder
20 value of milk is now much less, by far the smallest in recent
21 years or perhaps ever, than the pay price at Minnesota-Wisconsin
22 plants for manufacturing grade milk.

23 Assuming that butter-powder plants pay the Minnesota-
24 Wisconsin price, the make allowance in January, 1974, was a
25 negative 70 cents, compared with 62 cents a year earlier, 4

398a

cents as the simple average in 1972, and 54 cents as the simple average in 1971.

Data for all months since July, 1968, when standard Class II pricing and the naming of a 48 cent make allowance for butter-powder milk, rather than 57.7 cents less a dime, under four Northeast Orders was begun, are given in Table 1, of Exhibit X-19.

In no month of this 67-month period were butter-powder make allowances negative until November, 1973. They were in the 40's in 19 months, in the 30's in 13 months, and in the 50's in 11 months.

When recent M-W prices apply as the raw product cost to buyers of Class II milk in the Midwest, manufacture into butter and powder results in drastic losses. If the actual costs are 80 cents per 100 pounds of milk, the January loss would be \$1.50.

With some orders in the country using a butter-powder snubber for Class II pricing and others not, the wide departure of the butter-powder value from the M-W price presents serious problems of price alignment.

In the early 1960's the USDA revised its method of establishing the manufacturing class price throughout the federal milk order system by shifting from a product make allowance to a competitive pay price series.

The product make allowance had usually consisted of

399a

1 market prices for butter and nonfat dry milk or cheddar cheese
2 together with yield factors and make allowances to arrive at
3 a price for Class II, or III, milk.

4 The competitive pay price in recent years has been
5 the Minnesota-Wisconsin manufacturing grade milk price series,
6 following earlier use of the U.S. average pay price for manu-
7 facturing milk. The latter was used in the Northeast until
8 July 1, 1968.

9 On occasion over the years, the competitive situation
10 for milk supplies in the Midwest, what with a strong cheddar
11 cheese market, resulted in an average pay price in excess
12 of that which butter-powder plants could realistically pay
13 for milk.

14 As a result, many federal orders sought to have a
15 limiting factor included in the price computation to avoid
16 having to pay abnormally high prices for their manufacturing
17 class. This limiting factor, for the most part, was a butter-
18 powder formula with yield factors and make allowances which
19 reflected the average margin or spread between the prices that
20 handlers were paying for milk delivered to butter-powder
21 plants and the wholesale prices for the finished products.

22 The orders would read: "The price for manufacturing
23 milk shall be the Minnesota-Wisconsin average pay price for
24 manufacturing grade milk, but not to exceed the butter-powder
25 formula by 10 cents per cwt."

400a

The formula, as originally developed in the mid-1960's, was as follows:

Butter price - 3 cents per pound make allowance x 4.2 pounds yield per cwt., plus powder price, 5.5 cents per pound, make allowance x 8.2 pounds yield per cwt. equals butter-powder formula price.

If the butter price was 68 cents and the powder price 32 cents, the calculation would be:

68 cents - 3 cents x 4.2 equals \$2.73

32 cents - 5.5 cents x 8.2 equals 2.173
\$ 4.903

If the Minnesota-Wisconsin price was \$5.05 for that same month, the effective price then would be \$5.003, or \$4.903 plus ten cents, since the Minnesota-Wisconsin price did exceed the butter-powder formula by more than ten cents.

The make allowance of approximately 58 cents was in effect reduced to 48 cents by the ten cents adjustment. The 58 cents is made up of:

3 cents on butter x 4.2 equals 12.6 cents and

5.5 cents on powder x 8.2 equals 45.1 cents to total of
57.7 cents

By increasing the pay price to ten cents over the butter-powder formula price, the margin is reduced by ten cents, and it becomes 47.7 cents. As the formula became re-written over the past few years, and in the Northeast on July 1, 1968, it has been simplified to the butter price times

401a

1 four point two plus the powder price x 8.2, less 48 cents,
2 with the effective pay price either the Minnesota-Wisconsin
3 price or the butter-powder formula price, whichever is lower.

4 Since the shift to use of competitive pay prices
5 in the market orders in July, 1962, two major things happened
6 to put some Northeast cooperatives and particularly the oper-
7 ating cooperatives, in a difficult economic situation.

8 First, the proprietary handlers in the manufacturing
9 part of the industry steadily shifted their operations either
10 out of manufacturing entirely or primarily to the "soft"
11 manufactured products like cottage cheese, yogurt, and sour
12 cream.

13 The cooperatives, responsible for providing a market
14 for members' milk, found themselves more and more in the
15 butter-powder business. In a study by R.P. Story of Cornell
16 University for the New York-New England Dairy Cooperative
17 Coordinating Committee, it was found in New York State in
18 December, 1969, that 80.4 percent of the butter and powder
19 manufactured in the state was in cooperative plants operated
20 by Coordinating Committee members, 33.7 percent of the ched-
21 dar cheese, and only 12 percent of all other manufactured
22 milk products.

23 The second major change adversely affecting the
24 economic stability of the cooperatives was the increase in
25 the margins under the price support program while the margin

402a

in the butter-powder formula remained unchanged.

On April 1, 1966, for example, the support price was announced at \$3.50, or adjusted to 3.5 percent butterfat, \$3.34. Purchase prices to effectuate the support price were 60.966 cents per pound for butter at Chicago and 16.6 cents per pound for powder.

Using the butter-powder formula yield factors, a margin of 58.2 cents was available:

$$\begin{array}{rcl} 60.966¢ \times 4.2 & \text{equals} & \$2.561 \\ 16.60 ¢ \times 8.2 & \text{equals} & \underline{1.361} \\ & & \$3.922 \end{array}$$

$$\begin{array}{rcl} \text{Support price} & & -3.34 \\ \text{Margin} & & \underline{\underline{\$.582}} \end{array}$$

This was also the amount, 58 cents, less a dime, established in the butter-powder snubber in Northeast orders in the mid-1960's. By 1972 this margin had increased to 66.3 cents. The support price was \$4.93, or \$4.78 when adjusted to 3.5 percent butterfat.

Using the purchase prices of 67.708 cents for butter at Chicago and 31.7 cents for powder the calculation is:

$$\begin{array}{rcl} 67.708¢ \times 4.2 & \text{equals} & \$2.844 \\ 31.7 ¢ \times 8.2 & \text{equals} & \underline{2.599} \\ & & \$5.443 \\ \text{Support price} & & -4.78 \\ \text{Margin} & & \underline{\underline{\$.663}} \end{array}$$

As will be explained in the following section, the price support margin, which for milk of average test was 67 cents from April 1, 1971 to March 15, 1973, was further

403a

increased to 72 cents on the latter date, whereas the federal order make allowance under the butter-powder formula remained at 48 cents, thus making it difficult for Northeast dairy cooperatives manufacturing butter and powder to break even.

The make allowance under 1972-73 price supports was 67 cents per cwt. of milk of average test, 3.67 percent for use in butter and nonfat dry milk, and 77 cents for use in cheese.

Effective March 15, 1973, and continued with the increase in price supports on August 11, from \$5.29 to \$5.51, the make allowances were increased five cents for butter-powder milk and ten cents for cheese, to 72 cents and 87 cents respectively.

However, a tilt of 25 cents per cwt. was introduced on March 15, 1973, for the first time in the history of price supports, -25 cents for butter-powder milk and + 25 cents for cheese, resulting in effective make allowances at support levels of 47 cents for butter-powder milk and \$1.12 for cheese.

This tilt was continued in the price support change on August 14, 1973, and still prevails. With today's costs the make allowance for butter-powder milk probably should be about 80 cents per 100 pounds of milk of average test, under both the price support and federal order programs.

It is the distortion just described, the unrealistically low make allowance for butter-powder milk in the price

404a

1 support program and the tilt toward cheese that accounts in con-
2 siderable part for our being here today in a hearing to con-
3 sider Class II price changes under federal orders.

4 A major distortion under price supports has caused
5 federal order pricing problems. The most logical solution
6 would be to make a change at the source of the trouble, in
7 the price support levels.

8 If price supports were set at 90 percent of parity,
9 with a make allowance of plus five cents from the 72 cents
10 and 87 cents levels for butter-powder and cheese, respective-
11 ly, that were established effective March 15, 1973, and the
12 tilt was eliminated, it could very well be that no amendments
13 whatsoever in Class II pricing would be needed at this time,
14 and particularly so if it were announced that no more Presiden-
15 tial Proclamations allowing emergency imports of dairy prod-
16 ucts would be forthcoming.

17 A major unfavorable item in the dairy outlook is the
18 threat, and actuality, of greater imports of dairy products,
19 in line with Flanigan Report recommendations. The Flanigan
20 Report suggests that the U.S. dairy industry is expendable,
21 and that much of it should be liquidated, through the pressure
22 of low dairy farm incomes, with greater imports of dairy
23 products.

24 Citing inadequate domestic supplies of milk and
25 milk products, seven Presidential Proclamations allowing extra

405a

emergency imports have been made since late 1972, as follows:

One. December 30, 1972, 25 million pounds of nonfat dry milk.

Two. April 25, 1973, 64 million pounds of cheese.

Three. May 10, 1973, 60 million pounds of nonfat dry milk.

Four. July 18, 1973, 80 million pounds of nonfat dry milk.

Five. August 28, 1973, 100 million pounds of nonfat dry milk.

Six. November 1, 1973, 56 million pounds of butter and fresh or sour cream, and 22 million 600,000 pounds of butter oil.

Seven. January 2, 1974, 100 million pounds of cheese.

At the same time that an inadequate supply of milk has been cited as requiring emergency imports, an adequate supply of milk has been given as the reason for setting price supports at the lowest percentage of parity permitted by law.

There is an inconsistency in the government's rationale for the actions. Emergency Proclamations allowing dairy product imports seem undesirable from a public interest standpoint for such reasons as:

One. They discourage U.S. dairy farmers. They can be the trigger, the "straw that broke the camel's back" for

406a

1 exodus from the dairy business by many many farmers. What is
2 gained for consumers in extra imports may be offset by a loss
3 in U.S. production.

4 Two. They tend to substitute unreliable world sup-
5 plies of milk for more dependable domestic productin. The
6 EEC, for example subsidizes exports when dairy product supplies
7 are high, yet only two years ago, Great Britain, one of its
8 members, imported large quantities of butter from the United
9 States.

10 Launching Project Independence for oil is inconsis-
11 tent with launching Project Dependence for a major food cate-
12 gory such as milk and dairy products.

13 Three. They are a substantial minus insofar as our
14 balance of payments problem is concerned.

15 Four. Dairy farm inspections are not always know to
16 us, and in many instances are inferior to those for U.S. milk
17 going into dairy products. Imports could come from countries
18 where foot and mouth disease exists.

19 There are grave doubts that U.S. consumers want
20 lower quality standards for the milk going into imported prod-
21 ucts than for that produced at home, and we have no assurance
22 but that this may not be the case.

23 Five. The dairy cow ranks high among farm animals
24 in the efficiency of conversion of feedstuffs to human food.
25 Hence, a domestic dairy industry to supply our needs makes

407a

1 economic sense. Our dairy farms rank high in efficiency
2 compared with those in other countries.

3 It makes little sense to ship feedstuffs abroad to
4 feed cows on less efficient farms to produce milk for dairy
5 products to ship back to us on a subsidized basis. The emer-
6 gency imports we have had to date have further aggravated the
7 problems in federal order Class II pricing associated with
8 the milk in price supports.

9 The Proclamations or Cost of Living Council recom-
10 mendations pertaining thereto have caused butter prices to
11 fluctuate in an erratic manner. With erratic butter prices and
12 lower butter prices associated with the November 1 Proclamation
13 butter-powder values have been affected.

14 The suggested remedy is to go to the source of the
15 trouble, just as with price supports, and not make any further
16 Presidential Proclamations on dairy product imports. If this
17 was announced as governmental policy, along with the suggested
18 change in price supports, no change in Class II pricing might
19 be needed as a result of this hearing.

20 It is generally recognized that the Minnesota-Wiscon-
21 sin price series is moving toward obsolescence. Less and
22 less milk is going through strictly Grade B manufacturing
23 plants.

24 Apparently the pay price is affected both by
25 understatement of butterfat tests, and by subsidization of

408a

1 farm-to-plant hauling costs, and, in any event, the pay prices
2 are not audited in the federal order manner.

3 The Milk Pricing Advisory Committee of the USDA stated
4 in its March, 1973, report that "The Committee feels that the
5 Minnesota-Wisconsin price still is a reliable measure of
6 manufacturing milk values in these two states.

7 "From the standpoint of reliability there is no
8 reason to change immediately from using the Minnesota-Wisconsin
9 price as a mover of federal order prices. On the other hand,
10 conversion and plant mergers will over time make it increas-
11 ingly difficult for the Department to maintain a reliable and
12 accurate estimate of the value of manufacturing milk.

13 "In addition, industry confidence in a government-
14 administered pricing system is important. This is particularly
15 true in a situation where it is generally recognized that a
16 change will be absolutely essential some time during the next
17 five years.

18 "While there is general industry confidence in the
19 reliability of the Minnesota-Wisconsin price series as a Class
20 I price mover, even now questions are being raised as to its
21 continued reliability. We recommend that the Department prepare
22 for such transition and that it be responsive to requests for
23 a hearing on the matter of a product price formula as a
24 substitute for the Minnesota-Wisconsin price series."

25 The Committee also concluded that "in the absence

409a

1 of reliable competitive pay prices, strong consideration
2 should be given to product price formulas as a substitute for
3 the Minnesota-Wisconsin series in establishing federal order
4 surplus class prices.

5 " The incentives provided by a composite butter-powder
6 cheese formula argue for its appropriateness as a mover of
7 surplus prices. Consideration might also be given to weighting
8 the butter-powder and cheese components to give consideration
9 to the uses made of surplus milk in various markets.

10 "Another alternative involves the establishment of
11 a separate butter-powder class." In view of the need to move
12 away from the Minnesota-Wisconsin series as the mover in
13 Class II pricing formulas, the Coordinating Committee recommend-
14 ation, making a start in that direction but not doing so
15 totally, has merit.

16 Dairy farmers in some countries have given up the
17 voluntary cooperative approach in marketing milk, and turned
18 to compulsory cooperative membership under government auspices.
19 In Canada, producer participation in provincial programs is
20 required of all dairy farmers, and all must contribute to
21 their cost.

22 Ontario, for example, moved in November, 1965, to
23 a Milk Marketing Board.

24 MR. COCHRAN: Your Honor, I have refrained from
25 making objections here, but I think we are getting completely

410a

1 afield when we cite for this Determination what somebody is
2 doing in Canada. To me that is totally irrelevant. I have not
3 made objections so far because I did not know what was coming.

4 But I now object to the receipt of any testimony
5 with respect to what this milk pricing advisory committee
6 found as being determinative of any issue in this hearing. I
7 don't see anybody here from the Milk Pricing Advisory Commit-
8 tee.

9 Or, I don't have their complete report. I am quite
10 sure it has not been officially affirmed or adopted by the
11 Secretary, so I object to the receipt of that testimony in
12 the record.

13 Any reference to the report of the Milk Pricing
14 Advisory Committee. I object to any further reference or
15 any reference at all to what type of regulation is practiced
16 in Canada.

17 MR. CHERNOFSKY: Your Honor, to begin with, the
18 Milk Pricing Advisory Committee was sponsored by the U.S.
19 Department of Agriculture. Their report, although it may not
20 have been adopted by the Department of Agriculture, certainly
21 should not be excluded from this hearing.

22 Your Honor, as far as excluding any testimony as to
23 what is done in Canada, I think that is not a valid request.
24 Just because it is done in Canada doesn't mean we shouldn't
25 possibly consider it here, and I think it is germane.

411a

1 MR. COCHRAN: Your Honor, if I might remark at this
2 time, certainly this Milk Pricing Advisory Committee is not
3 an official release of a publication or determined by the
4 U.S. Department of Agriculture or the Secretary.

5 Certainly, we couldn't take official notice of it.

6 MR. CHERNOFSKY: I did not request that.

7 MR. COCHRAN: But you are quoting from it. These
8 are selected excerpts.

9 JUDGE McALPIN: Thank you, gentlemen. I am going to
10 overrule the objections, Mr. Cochran. This, as I understand
11 it so far, is presentation of a proposal that was made and
12 included in the Notice of Hearing in this presentation con-
13 cerning that proposal.

14 I do not propose to tell the proponents how they
15 should present it, so long as it is within the province of
16 that proposal. I am going to permit them to present it in
17 what manner they think most effective. I am certain it will
18 be properly weighed as to the effect of the presentation by
19 the Secretary and by the Department.

20 The objection is overruled.

21 MR. COCHRAN: I have my routine exception, Your
22 Honor.

23 JUDGE McALPIN: You have an automatic exception to
24 every ruling I make, sir.

25 MR. COCHRAN: Thank you, sir.

1 JUDGE McALPIN: You may proceed, Dr. Johnson.

2 THE WITNESS: Ontario, for example, moved in Novem-
3 ber, 1965, to a Milk Marketing Board, supported by and marketing
4 milk for all dairy farmers. Costs of marketing, including
5 balancing and surplus-handling, are shared by all farmers
6 through the Board.

7 Checks to farmers for their milk come directly from
8 the Board. In Great Britain, four Milk Marketing Boards have
9 provided compulsory milk marketing cooperatives since the
10 1930's, one for England and Wales, and three for Scotland.

11 MR. COCHRAN: Your Honor, I will object to references
12 as to how the milk pricing program in England operates.

13 JUDGE McALPIN: You have a continuing objection,
14 Mr. Cochran, but my ruling would be the same with reference to
15 that as it was to Canada.

16 MR. COCHRAN: Thank you.

17 THE WITNESS: The England-Wales Board operates some
18 surplus handling plants, runs a milk advertising program,
19 operates artificial breeding and record-keeping services for
20 farmers, tests milk for nonfat solids and differentiates prices
21 depending on these tests, controls and operates milk hauling
22 from farms, presents the dairy farmers' case for favorable pri-
23 ces at an Annual Price Review by the British government, and
24 performs many other functions.

25 All farmers market their milk through the Board, pay

413a

1 its costs, and receive their milk checks from the Board.

2 A compulsory cooperative program has not been fol-
3 lowed in the United States partly because of the difficulty
4 of devising a single program for a large country, partly be-
5 cause states have limited police powers and cannot control
6 interstate commerce in most of its aspects.

7 And partly because of the many virtues of a "run it
8 yourself" program over one run by the government. Voluntary-
9 membership cooperatives have been looked on with favor, and
10 encouraged as a part of national policy by special legislation.

11 If the voluntary-membership system is to survive and
12 live up to its potential, including flexibility, freedom, and
13 efficiency, encouragement and support is needed from the U.S.
14 government.

15 Support is found in Memorandum 1793 of Secretary
16 Butz dated October 27, 1972, concerning USDA policy on cooper-
17 atives, directing "The Administrator of each Agency in the
18 Department to continue to reexamine each year each of his
19 programs and, where necessary, reshape them to carry out the
20 full intent of these laws, related to cooperatives, and offer
21 maximum encouragement to cooperatives as a means of improving
22 farmers' income and developing rural America."

23 This memorandum has been identified as part of Exhi-
24 bit X-19. Despite this memorandum, the present Departments of
25 Justice and Agriculture sometimes seem uncertain as to whether

414a.

they should encourage and support voluntary membership milk marketing cooperatives, which has been the U.S. system in contrast to that in other countries.

They seem to have simultaneous attraction for, and repulsion from, milk marketing cooperatives. The "repulsion from" of government's ambivalent attitude shows up in its court suits to break up effective dairy cooperatives, with statements at the highest levels reflecting seeming ignorance of the merits of the cooperative movement.

Only recently has there been USDA rebuttal to overly critical Justice Department statements.

MR. COCHRAN: Your Honor, I know I have a continuing objection, but I want to specifically object to this matter he is referring to now as having any relation whatever to Proposal 5 or any issue in this hearing.

We are completely and totally far afield here.

MR. CHARNOVSKY: Your Honor, what Dr. Johnson --

JUDGE McALPIN: Mr. Cochran, I appreciate it and have given you a continuing objection. I think we would all now permit the witness to make his statement without interruption, and then if you do have points that you want to make at the conclusion of it, you reach them through cross-examination, or by subsequent sworn testimony.

MR. COCHRAN: Thank you.

JUDGE McALPIN: You may proceed, Dr. Johnson.

415a

1 THE WITNESS: "Repulsion from" also showed up last
2 summer in opposition to amendments to the Marketing Agreement
3 Act, proposed by the National Milk Producers Federation but
4 deleted from the Agriculture and Consumer Protection Act as
5 enacted last August 10, which would have strengthened cooper-
6 atives and better enabled them to live with their persistent
7 "free rider" problem.

8 Voluntary membership cooperatives in the Northeast
9 need help and encouragement from the government, partly in
10 terms of federal orders, in combatting the free rider problem
11 that is ever present in a voluntary system.

12 The government cannot stand aside, or make adverse
13 federal order decisions, and let producer cooperatives operate
14 at a fraction of their potential without a share of the blame.
15 More specifically, what is the free rider problem?

16 Full service responsible cooperatives provide a
17 market for all producers in the market, every day of the year.
18 They provide balancing services for fluid handlers. They manu-
19 facture unwanted surpluses, delivered irregularly, frequently
20 at a loss.

21 They have effective and costly programs for improving
22 milk prices and dairy farmers' incomes. The cost of these
23 services is not borne by non-members. The cost is not borne
24 by members of limited service cooperatives.

25 The membership of the full service cooperative, as

a result, may erode. The management of the full service cooperative, consequently, may decide to spend considerable time and effort on purely organizational problems. With this diversion of time and effort, the full service cooperative is not as efficient, nor as effective, as it otherwise could be.

Special pricing under federal orders of "last resort" uses of irregular surpluses resulting from balancing are a way that government has helped alleviate the free rider problems of the voluntary membership cooperative system.

About half the federal orders have a provision that lies in this direction. In a recent count, a few months ago, thirty-two orders priced Class II or III milk on the M-W series only, and 30 had a butter-powder snubber of some sort.

Of the 30, 15 used a make allowance of 48 cents, as in the Northeast, and 15 used a different make allowance, much higher in some instances. The rationale of the butter-powder snubber is that competitive conditions in Minnesota, Wisconsin, affected by a strong cheddar cheese market, could result in an average pay price in excess of that which would allow any profit at butter-powder plants.

Hence, with a ten-cent levy, orders provided that the butter-powder value would prevail when such occurred. This was particularly important in areas distant from the Midwest where a larger proportion of the milk received at butter-powder plants was an irregular supply resulting from

417a

balancing, and, by and large, the orders having butter-powder snubbers were and are in these areas.

As the 48 cent margin established in the butter-powder snubber in Northeast orders in the mid-1960's became outdated by rising costs, proprietary handlers in the area steadily shifted their operations either out of manufacturing entirely or primarily to the "soft" manufactured products like cottage cheese, yogurt, and sour cream, requiring a regular supply of milk.

The full service cooperatives, as a result, found themselves more and more in the butter-powder business, the most profitable or, more accurately, the least loss method of disposal for large volumes of milk available in irregular and nonpredictable volumes.

In the Northeast the last report use quite commonly is butter-powder or storage cream-powder. Other Class II uses such as cottage cheese, fluid cream, cheddar cheese, and other cheeses, take steady amounts of milk, albeit there are occasional fluctuations.

Even with cheddar cheese, the make of which is highly seasonal, once the operation begins in early spring it usually continues until time to stop in late summer or early fall. Not so with butter-powder. It is considered to be the most economical of the stop-and-start operations in dairy manufacturing.

418a

1 It is the "least-loss" way to handle leftover milk from
2 day-of-the-week balancing of fluid needs. Given the above
3 facts the need for special pricing of butter-powder milk in
4 any amendment resulting from this hearing is obvious.

5 The voluntary membership cooperatives that handle
6 this last resort use need a price they can live with if they
7 are to continue as an effective force in the orderly marketing
8 of milk. The burden of carrying the residual surplus needs
9 to be distributed evenly, or as nearly so as possible, among
10 all producers, or disorderly marketing will result.

11 Stated generally, the purposes of the Marketing
12 Agreement Act of 1937 insofar as milk is concerned are, one,
13 to promote orderly marketing' two, to permit markets to
14 develop and operate in an efficient manner; three, to improve
15 dairy farmers' incomes; four, to insure an adequate supply of
16 milk; and, five, to promote the public interest.

17 In achieving these goals, certain principles are to
18 be followed, specifically equal costs to handlers for given
19 uses of milk, and equal prices to neighboring farmers under any
20 order, both subject to appropriate differentials, those which
21 serve the above purposes.

22 Also stated generally, the Act prescribes guides to
23 proper pricing of reserve supplies, outlined by H.L. Forest,
24 Director of the Dairy Division, Consumer and Marketing Servi-
25 ces, USDA, in a talk of March 10, 1965, entitled, "Federal

419a

1 Order Pricing of Milk Used for Manufacturing", as follows:

2 "The problem of surplus milk pricing is one of pro-
3 viding for orderly disposition of surplus for the short run
4 as well as the longer time spans. This means that at any
5 given time the price must be at a level which will provide for
6 the utilization of surplus milk in manufacturing outlets.

7 "In the longer range, we attempt to obtain prices at
8 the highest level which is consistent with the maintenance of
9 adequate manufacturing resources for the disposition of such
10 surplus in regulated markets.

11 "Variation in quantities of surplus available, regular-
12 ity of deliveries, institutional factors, and efficiency of
13 resources devoted to manufacturing may, at any given time, re-
14 sult in small differences in the level of surplus milk prices
15 among markets."

16 The purpose of classification and class prices
17 under federal milk orders is to provide market stability and
18 payment of uniform prices to producers at levels contemplated
19 by the statute. At the same time, all milk delivered by pro-
20 ducers must be absorbed in the market, irrespective of the
21 variable demand for milk and dairy products.

22 It is essential that the lowest use classification
23 be priced at a level so that the market will be cleared season-
24 ally and from day to day throughout the week. Handlers,
25 other than cooperative associations, and they only if they

1 undertake to do so, are not required to receive milk from pro-
2 ducers. They purchase milk to meet their own requirements in
3 specific outlets.

4 The milk not required by handlers, nonetheless, must
5 be disposed of in one manner or another, and this responsibil-
6 ity rests largely with cooperative associations. The handling
7 of reserve milk in an orderly fashion accrues to the benefit
8 not only of the members of the cooperative which provides the
9 service, but to all producers, all handlers, and the consuming
10 public.

11 If a cooperative association is to absorb the milk
12 not required by handlers as a service to all producers and
13 the market, it is essential that it be priced at such level
14 that there is no financial loss to the association performing
15 the service.

16 This is required in considering the relative inter-
17 ests of members versus non-members of cooperatives, and if
18 one cooperative handles reserve supplies and another does not,
19 the relative interest of one cooperative versus the other must
20 also be considered.

21 The cooperative which handles the reserve milk for the
22 market must account for such milk at a price commensurate with
23 returns that can be obtained from such milk or from products
24 of such milk. Failing that, it would be essential that such
25 cooperative associations, by other means, be reimbursed for

1 performing this service for the market. Thus far, means
2 for accomplishing this latter alternative have been absent or
3 inadequate.

4 The record of decisions by the Secretary of Agricul-
5 ture is replete with examples of statements concurring with
6 the above-enunciated principles of reserve milk pricing. In
7 the final decision on a hearing on the subject issued May 10,
8 1966, for the Puget Sound Order, the following statement is
9 made:

10 "Milk disposed of in manufactured uses must be
11 priced under the order at a level which will result in the
12 orderly marketing of such milk. Within this concept the price
13 level should be that which will provide the highest possible
14 returns to all producers in the market."

15 A decision picked at random from the Federal Regis-
16 ter of June 16, 1970, includes the following statement:

17 "Producer milk not needed for Class I use should be priced at
18 the maximum level that permits the orderly disposition of the
19 milk.

20 "Only when there is a definite indication that the
21 order price is not clearing the market of reserve supplies in
22 an orderly manner would there appear to be any justification
23 for reducing the price level."

24 A Northeast decision from the Federal Register of
25 May 15, 1968, for Orders 1, 2, 3, 4, 15 and 16, ends a long

422a

1 discussion of the principles of pricing reserve supplies with
2 this statement. "The Class II price level cannot be fixed
3 above a level which will insure the orderly disposition of
4 the necessary market reserve. Otherwise, the order could not
5 be effective in implementing the purposes of the Act."

6 It is requested that official notice be taken of this
7 Northeast decision. Stated as simply as possible, the Act
8 and federal order decisions seem to say that Class II milk
9 should be priced as high as possible within constraints of
10 marketability of all the milk, equity among producers and
11 cooperative associations of producers, consistency with other
12 statutes such as those concerned with price supports, and
13 consistency with the U.S. policy of fostering a system of
14 strong voluntary membership cooperatives.

15 On the need for consistency with other statutes, in
16 a January 14, 1971, decision on all federal orders, the Sec-
17 retary denied proponent cooperatives the use of an "economic
18 formula" for changing Class I prices stating as a primary
19 reason the necessity for the Secretary to maintain consistency
20 between his milk order program and his price support program.

21 Although he has failed to do this in the make allow-
22 ance for butter-powder operations, using 48 cents for milk
23 orders and 67 cents or 72 cents for price supports in recent
24 years, it well could be that this particular glaring exception
25 should be eliminated rather than abandoning the principle of

423a

consistency.

The general statement by the Director of the Dairy Division of tests of proper surplus pricing, as given previously in this section of my statement, referred to "variations in quantities of surplus available, and, regularity of deliveries" as factors that could affect proper Class II prices in particular markets.

A greater seasonality in deliveries to Northeast manufacturing plants than is found in many midwest markets results in relatively higher costs of manufacture. Data on seasonality are given in tables that will be later entered in evidence by George O'Brien, Federal Order Economist for Dairy League.

Using an average of butter-powder values and the Minnesota-Wisconsin price would have increased the Class II price under Orders 1, 2, 4 and 15, and the Class III price under Order 36, by 21 cents during the past 12 months, Table 2 of Exhibit X-19.

During February through September, eight of these 12 months, the increase would have come from using an average instead of the M-W price. During October 1973-January 1974 the increase would have come from using an average instead of the butter-powder value.

The federal order blend price increase for particular markets in given months can be obtained by applying the

424a

percentage Class II or III to the increase. It is the judgment of the Coordinating Committee that this suggested change will bring the maximum increase in blend prices consistent with marketability of milk under these orders, equity among producers and cooperative associations of producers and maintenance of strong producer cooperatives that are necessary for satisfactory dairy farmer incomes.

The exact figure that is right cannot be determined precisely, judgment, and the trial and error process are required. The suggested change as calculated in Table 2 overstates somewhat the blend price increase, since with manufactured dairy product prices depending in large part on the national market, a Class II price increase simply transfers funds from members of cooperative manufacturing Class II products to members of all cooperatives and non-coop-members under the orders.

Table 2 also overstates the increase somewhat because of the safety value of a butter-powder value for butter-powder use when the butter-powder value is less than the M-W price.

Such a safety value seems necessary for the marketability of milk, the second part of the general principle that the Class II price should be as high as possible and still have marketability.

Moreover, it seems necessary to promote equity among

425a

1 producers and to foster strong milk marketing cooperatives.

2 No change in the seasonal factors applied later in
3 the Class II calculations is being proposed by the Coordina-
4 ting Committee. There is ample justification for continuation
5 of seasonals, and I will give some reasons therefor in an
6 extemporaneous statement beyond my prepared statement.

7 Furthermore, no change in the 48 cents make allow-
8 ance is being proposed at this hearing by the Coordinating
9 Committee. If it were to be increased to, say, 80 cents in
10 line with costs, then perhaps the butter-powder value should
11 always apply to butter-powder milk, not only when the butter-
12 powder value is below the M-W price.

13 Finally, it is hoped that prompt action of a needed
14 nature, as previously outlined, would be taken under the price
15 support program and as to further Presidential Proclamations
16 on dairy product imports.

17 If such action came prior to a decision, it is
18 entirely possible that no amendments whatsoever would be needed
19 at this time.

20 This completes my prepared statement.

21 BY MR. CHERNOFSKY:

22 Q Dr. Johnson, on Page 6 of your prepared statement
23 you mentioned the Flanigan Report. Would you identify that
24 for the record, please?

25 A The name comes from that of the Chairman of the

426a

1 Committee, Peter Flanigan, who is on the White House Staff
2 in charge of International Economic Affairs. He chaired this
3 committee, including a fairly large number of people and
4 put together a report which at first was a secret report, but
5 was later introduced into the Congressional Record by Senator
6 Humphrey of Minnesota.

7 Since then, the report has been distributed quite
8 widely among those in the dairy industry.

9 MR. CHERNOFSKY: Your Honor, at this point we would
10 like to have official notice taken of the Flanigan Report.

11 MR. COCHRAN: Your Honor, I object to official no-
12 tice being taken of the Flanigan Report.

13 MR. CHERNOFSKY: Your Honor, this is published as a
14 government report in the Congressional Record.

15 MR. COCHRAN: I doubt that it is published as a
16 governmental report that relates in any official manner to
17 the duties or obligations or responsibilities of the Secretary
18 or the Administration of the Department of Agriculture.

19 JUDGE McALPIN: Do I hear some other remark?

20 MR. CHERNOFSKY: Your Honor, this report was prepared
21 for the Council on Economic Policy and was printed for the
22 Committee on Forestry and is a document printed by the U.S.
23 Government Printing Office.

24 I think, under those circumstances, we are entitled
25 to have official notice taken of the document.

427a

1 JUDGE McALPIN: Are you asking for official notice
2 of the entire document, or the portion to which you have re-
3 ferred in this presentation?

4 MR. CHERNOFSKY: The portion that has been referred
5 to in this presentation is a summary of the entire report.
6 It is a very quick, overall statement of what the report seeks
7 to accomplish.

8 JUDGE McALPIN: All right, sir. Let the record
9 show that in view of the fact that references have been made
10 to the report in the presentation here and the report being
11 contained in a publication put out by the Government Printing
12 Office, having appeared also as indicated here in the Congres-
13 sional Record, that official notice of said report will be
14 taken.

15 And references may be made to it.

16 MR. CHERNOFSKY: Thank you.

17 BY MR. CHERNOFSKY:

18 Q Dr. Johnson, on the bottom of Page 11 of your pre-
19 pared statement and the top of Page 12, you refer to a recent
20 count, 32 orders prices Class II or III milk on the Minnesota-
21 Wisconsin Series and 30 had a butter-powder snubber of some
22 sort.

23 This is a count that was taken before the very
24 recent decision, of which we have had some indication concerning
25 the 39 markets.

428a

1 A That is correct.

2 Q Would you, in your opinion, think that the decision
3 of which we have had an indication of its contents is a pro-
4 gressive or retrogressive step by the U.S. Department of Agri-
5 culture?

6 A My opinion is that it would have been better to
7 leave the butter-powder snubber in the 14 markets from which
8 it was removed in the final decision and to have held to the
9 revised recommended decision.

10 Q Dr. Johnson, do you have some other statements you
11 would like to make?

12 A There are two additions, beyond my prepared state-
13 ment. One is concerned with the seasonal factors under North-
14 east orders and the other is concerned with whether the emer-
15 gency procedures should be followed, or not.

16 Taking the latter first, the Coordinating Committee
17 feels that this is an extremely important issue and they would
18 like to see a recommended decision before a final decision.
19 In other words, they do not want to see the recommended decision
20 omitted.

21 This issue is being considered at a time when the
22 manufacturing industry is in a state of major disequilibrium
23 associated in part, as I have said, with the token price
24 support program and the Presidential Proclamations.

25 We are due to get new price supports by April 1, so

1 that we will know within a little more than a month what the
2 government does in this regard.

3 They could, if they were so inclined, take action
4 that would considerably alleviate the problem. Similarly,
5 they could take action on Presidential Proclamations, although
6 we cannot be certain that they will act as quickly, because
7 they are not compelled to do so by law.

8 Also, orderly marketing in producer returns are
9 intertwined in the pricing of the manufacturing class. They
10 are inextricably intermingled. This contributes to the compli-
11 cated nature of the problem.

12 And to what probably will be some difficulty in
13 arriving at a proper solution, so that my first additional
14 point is that for these reasons the Coordinating Committee
15 wishes to see a recommended decision.

16 They do not want to have it skipped, and they want
17 time for briefs. They want ample time for briefs and for
18 exceptions. My second point concerns seasonality, but at
19 first I had thought it was not an issue at this hearing, and
20 the hearing was called on such short notice that I wrote my
21 statement before receiving a copy of the proposal.

22 Finding that some proposals do bring up this issue,
23 I would like to add to my statement some of the reasons why
24 the Coordinating Committee wishes the seasonal variation to
25 be continued, the seasonal variation that is added specifically

430a

after the first step in the computation.

It seems that an imposed seasonal variation in surplus milk prices, in addition to that reflected by the competitive pay price base, would help to promote orderly marketing of milk under Northeast Federal Orders. The seasonal changes and reserve prices and reflected margins help to achieve several important objectives.

I will give five, not necessarily in order of importance. First, they make some contribution to a more desirable change in the seasonal pattern of blended prices to encourage more uniform milk production.

Secondly, they help insure that surplus milk will be made available readily for Class I use in the short season and conversely, they contribute toward a ready market for milk needed for Class I use, in the flush season.

Third, they recognize that some important costs such as overtime labor are likely to be greater in the flush season. The seasons are recognized to the extent that margins on some products are lower than on others.

Low margin items are likely to be produced in greater volumes in the flush season, and fifth, the seasonal changes provide some recognition that many products have to carry storage or warehousing costs, since the sales may be more evenly spread over the year than the volume of production, and the price might well be higher while the product moves

431a

1 directly to product than one that has the storage or ware-
2 housing costs.

3 This completes what I wish to say, in addition,
4 supporting the seasonal factors on the Northeast Orders in
5 the Class II formula.

6 MR. CHERNOFSKY: Your Honor, on Page 15 of Dr.
7 Johnson's prepared testimony he requested that official notice
8 be taken of the Northeast Decision of the Federal Register,
9 May 15, 1968, covering Orders 1, 2, 3, 4, 15 and 16.

10 You did not rule on that, I believe.

11 JUDGE McALPIN: I understand it is for the purpose
12 of directing attention to the discussion and the quote refer-
13 red to in the statement.

14 MR. CHERNOFSKY: Yes, Your Honor.

15 JUDGE McALPIN: Without objection, let the record
16 show that official notice will be taken.

17 MR. COCHRAN: Your Honor, if we are to take official
18 notice we believe we should take official notice of the docu-
19 ment in its entirety, and not with respect to one select
20 sentence taken from the entire decision.

21 MR. CHERNOFSKY: No objection.

22 JUDGE McALPIN: When I indicate with special refer-
23 ence to some part that is in order that the Secretary does
24 not have to read the whole thing in order to find out what
25 we are talking about.

432a

1 But if anyone wants to make reference to any portion
2 of the decision of which official notice is taken you are
3 free to do so, because the entire decision is considered as
4 part of the record. We are not adopting what it said, but it
5 is merely being there.

6 MR. CHERNOFSKY: I would now request that Exhibit
7 X-19 be accepted in evidence.

8 JUDGE McALPIN: I don't think I finished. I was say-
9 ing that the record should show that official notice is being
10 taken of the Northeast Decision appearing in Federal Register
11 of May 15, 1968, for Orders 1, 2, 3, 4, 15 and 16.

12 Now, in keeping with your request, without objection,
13 the tables and Secretary's Memorandum No. 1793 identified as
14 Exhibit X-19 are now received in evidence.

15 (The items previously marked for
16 identification as Exhibit X-19
17 were admitted into evidence).

18 MR. CHERNOFSKY: No further direct, Your Honor.

19 JUDGE McALPIN: Are there questions of Dr. Johnson?
20 Mr. Cochran.

21 CROSS-EXAMINATION

22 BY MR. COCHRAN:

23 Q Dr. Johnson, to have the record perfectly clear in
24 this respect, you are not inferring in any manner that the
25 University of Connecticut has approved or endorses your

1 testimony in this somewhat private matter?

2 A No, sir.

3 Q I believe that you are regularly employed by this
4 Committee as a regular consultant to the committee?

5 A I have been employed as a consultant of the Commit-
6 tea since either December, 1966 or January, 1967 on a basis
7 of three days per month.

8 Q I believe you are appearing as an advocate for the
9 adoption of the proposal made by the Committee; is that cor-
10 rect?

11 A That is correct.

12 Q I believe that the record will show that the facts
13 are that in the Minnesota-Wisconsin Price Determination both
14 the prices paid by butter-powder plants and cheese plants are
15 given considerable weight; is that not correct?

16 A The precise makeup of reports that go into the
17 Minnesota-Wisconsin Series is not known. It is held confiden-
18 tial by the government.

19 Q If we were to assume that the weight between the
20 price of the cheese milk and the price of the butter-powder
21 milk is about in equal proportion, and if your proposal were
22 adopted, it makes the Class II price generally an average of
23 the Minnesota-Wisconsin price, and the butter-powder plant.

24 Would you not increase greatly the weight of the
25 butter-powder price in that determination?

434a

1 A. With your assumption that would be correct. But
2 I do not agree with your assumption. People who have tried
3 to estimate the M-W Series have found that it is closely cor-
4 related with cheese prices, and correlated very poorly with
5 butter-powder prices.

6 Neither you nor I know exactly what the figures are,
7 but there is a presumption that the Minnesota-Wisconsin Price
8 is becoming more and more the cheese price series and less and
9 less a butter powder price series.

10 Q Did you make that presumption?

11 A I would call it a presumption. It is a presumption
12 based on looking at the variability in butter-powder and the
13 variability in cheese prices and the variability in the
14 Minnesota-Wisconsin price.

15 Q I notice your answer there was in terms of cheese
16 price and butter-powder price and was not in terms of the
17 prices paid by the plants manufacturing cheese and by the
18 plants manufacturing butter-powder; is that correct?

19 A That is correct. My proposal to the Coordinating
20 Committee is to average the Minnesota-Wisconsin price and the
21 calculated value on butter-powder milk based on the product
22 prices.

23 I perhaps should add that in my statement here when
24 I referred to powder, I mean nonfat dry milk. I use them as
25 synonyms. I am excluding whole milk powder.

435a

1 Q Yes, I understand.

2 Is there a considerable quantity of the hard cheese
3 that is made in the Northeast area with respect to which you
4 are testifying?

5 A There is a considerable volume of hard cheese made
6 in the Northeast.

7 Q Does that represent a strong, cheddar cheese market,
8 the same way you are referring to the Midwest in your testi-
9 mony?

10 A The cheese market has been strong, nationally.

11 Q Including the Northeast?

12 A Including the Northeast.

13 Q You have used in reference to your calculations
14 here, you have used extensively the term, quote, "tilt",
15 T-I-L-T, end quote, making some reference to tilting toward
16 the cheese.

17 Could you give us a little more explanation of what
18 you intend when you say tilt toward cheese?

19 A I would be glad to. If you make allowance under
20 the Price Support Program prior to March 15, 1973, 67 cents
21 make allowance for butter-powder and 77 cents for cheese.

22 Q Please tell me on what page that testimony appears,
23 so that I can follow it.

24 A Page 5. On March 15, the make allowance for
25 butter-powder milk was increased by a nickel and for cheese a

436a

dime to 72 and 87 cents, respectively.

Ordinarily, that is where it would have stopped, and we would have proceeded to have private price supports, in line with the calculations thus far. You will recall that the price support at that time was \$5.29.

However, for the first time in history of price supports, they introduced what I call a tilt. They took 25 cents out of the \$5.29 to come to \$5.04 for butter-powder milk.

And they added 25 cents to the \$5.29 to come to \$5.54 for cheese milk. I said that this, in effect, reduced make allowance by 25 cents for butter-powder and increased then 25 cents for cheese.

Q Are you saying that the minus 25 and the plus 25 that you referred to are not related to the actual processing costs; is that correct?

A That is correct.

Q But it apparently was employed with the same effect as a make allowance, if you would sit down and make some calculations like you have, theorizing a make allowance.

A The government did not. The government in all the figures they sent out gives the 72 cents and the 87 cents respectively.

Q I kind of get lost in this process of pluses and minuses. But if I understand it correctly, the effect of that

1 plus tilt for cheese, that was apparently written into the
2 formula, as you suggest without reference to operating costs.
3 The effect of that plus 25 cents was to give a higher theo-
4 retical price for milk utilized in cheese; is that correct?

5 A That is correct.

6 Q You make a statement, perhaps in more than one
7 place in your testimony, that if the Secretary should act
8 favorably with respect to your recommendations as to price
9 supports, and import practice, that there might be no need for
10 any revision of the pricing formulas for Class II milk, the
11 pricing methods for Class II milk in the Federal Orders.

12 Could you tell me, sir, did you base that price, if
13 these things are done that you suggest here with reference to
14 the price support program, and the import program, what would
15 be the result in the Class II price value, as now related,
16 say, to the price used by the butterpowder formula?

17 A The Class II price would be higher and it would be
18 increased more for the butter-powder plant and the cheese
19 plant.

20 Q I wonder if you could give me your projection as to
21 the numerical quality of that input?

22 A Yes. You have to take them separately, or I prefer
23 to take them separately, rather than mixed together. Taking
24 the price supports first, if the price support was at 90 per-
25 cent of parity, and if the required support for manufacturing

438a

1 milk of average test should turn out to be \$7.30 cents, which
2 is my estimate, and if you divided for butter-powder milk in
3 the way that the National Milk Producers Federation has rec-
4 ommended, 70 percent on powder and 30 percent on butter, you
5 end up with about 35 cents a pound for butter, and 57 or 58
6 cents a pound for powder.

7 You don't necessarily have to use the 70-30. If
8 you use the 50-50, for example, you come up with a higher
9 price than 75 cents for butter, and a lower price than 57 or
10 58 cents for powder.

11 I haven't made the calculations for the 60 percent,
12 50 percent and so on. I have made them for the 70-30. So
13 that is the first part. There would be considerable help, if
14 they did nothing on proclamations but did something on the
15 order of which I just outlined on price supports.

16 Q All right, sir. If we can be a little more specific,
17 what is the current value or the value for the month of
18 January, 1974, for the butter-powder formula?

19 Do you have that before you?

20 A For the month of January the butter-powder formula
21 price with the 48 cents make allowance was \$6.92.

22 Q In other words, the currently affected butter-
23 powder formula is bringing forth a Class II price of \$6.92;
24 is that correct?

25 A That is correct, remembering that there are

439a

1 seasonal factors that are added in the Northeast.

2 Q Yes. Now, if the recommendations of the Secretary,
3 if the Secretary should adopt your recommendations as to a
4 modification, how would that \$6.92 be increased, to what fig-
5 ure?

6 A The Chicago butter price for January was 60 cents.
7 If it went to 75, which was in the 70-30 break, you would
8 add 70 cents, which times a 4.2 yield would add about 30 cents
9 a hundred.

10 If, instead of using a 70-30 break you chose a divi-
11 sion that would give, say, 85 cents for butter, then you would
12 add to that 30 cents another 42 cents, for 72 cents. I should
13 add two things in giving my answer.

14 That the price of butter now is lower than 68 cents,
15 so that the 75, if it should go to effect, has greater sig-
16 nificance than what we are getting for the month of January,
17 and I should also add that about three or four questions back
18 I gave the part -- you asked me a question with two parts.

19 What was the effect on price support and what was
20 the effect on Presidential Proclamations. You interrupted
21 with further questions before I gave the B part. I am perfect-
22 ly willing to stay on the A part, but I did want to point out
23 that I am giving only the A part of the answer.

24 Q If I understand it correctly, the Secretary, or
25 whoever decided the support program, should operate on the

440a

1 seventy-thirty basis. You are projecting that would increase
2 the \$6.92 price to \$7.32; is that correct?

3 A Approximately.

4 Q If you operate on a 50-50 basis, you describe it
5 that the \$6.92 becomes \$7.64.

6 A That figure has a lesser amount of reliability,
7 because I didn't go through the complete arithmetic of the
8 50-50 break, but it is theoretically possible that there would
9 be a break that would give the extra ten cents on the butter.

10 Q On what day in the future would you anticipate that
11 this change, if it did take place, would be reflected in the
12 butter-powder formula?

13 A If they follow the procedure of last year, it would
14 take effect on March 15th and would affect the March price.

15 Q With respect to the support program -- the import
16 program, do you have any projections on that?

17 A If it should be announced that there would be no
18 further Presidential Proclamations allowing the emergency
19 imports, I think this would add strength to dairy prices, gen-
20 erally, because it would be an indication that the Flanigan
21 Report was not going to be followed.

22 That we were not going to liquidate a substantial
23 part of the U.S. dairy industry, so that the immediate reaction
24 would be increases in prices all along the line, followed by
25 increased domestic production.

441a

1 Q Do you believe, in your opinion, that circumstances
2 now are such that additional milk production should be forth-
3 coming to assure an adequate supply of milk?

4 A Yes, I do.

5 Q This \$7.30 or \$7.64 that you project, under your
6 proposal, this would apply -- you are presuming that nothing
7 else is done. You intend that that price apply to every utili-
8 zation and disposition in Class II; is that correct?

9 A Every disposition except the butter-powder milk.

10 Q I may have misunderstood you. You were going on the
11 assumption that nothing need be done, as a result of this
12 hearing, and then you would have this price that is going to
13 be forthcoming for the butter-powder formula applied to all
14 Class II uses; is that correct?

15 MR. CHERNOFSKY: Your Honor, I would like the record
16 to show that was Mr. Cochran's characterization of the testi-
17 mony, not necessarily the witness'.

18 MR. COCHRAN: Your Honor, that is my understanding,
19 and if I am wrong, I want him to straighten me out.

20 THE WITNESS: I may have misunderstood your first
21 question. I thought you had asked me what would happen if
22 our proposal was adopted. Apparently, what you had asked me
23 was, what would happen if these other things happened instead,
24 namely adjustments in the support program and in imports.
25

BY MR. COCHRAN:

Q What I was referring to, specifically, was your statement on Page 8.

A I didn't hear that. I'm sorry.

Q Your statement that if these changes in imports and price supports are made, you say, quote, "No change in Class II prices might be needed as a result of this hearing."

That is what I am talking about.

A I think I have the import of your question now. I mean no change in the pricing formula, and if I do have in my statement that there will be no change in the Class II price, I stand corrected.

The Class II price would be affected, but through the present formulas.

Q Yes, sir. That's what I'm saying. Now, if you will get back to my previous question, if you were successful in prevailing upon the authorities to change their program on price supports, then this \$7.32 that you project would be the controlling Class II price, with respect to all utilization represented in Class II?

A That is correct. But you will remember the \$7.32 depends on the assumptions of the 70-30 breakdown, and nothing being done in Presidential imports.

Q You have before you the value of the Minnesota-Wisconsin Series for January, 1974?

443a

1 A I think it was \$8.10.

2 Q Are you representing that \$7.32 would be an adequate
3 price for the dairy farmers you represent with respect to
4 milk utilized in the hard cheeses?

5 A Under certain conditions it would be enough. But
6 let me add, further, that the members of the Coordinating
7 Committee take second place to no one in wanting higher prices
8 for milk and improved dairy farmer incomes.

9 They want as high a price as possible that is con-
10 sistent with marketability of milk, and with the other tests
11 of equity among producers and fostering strong cooperatives
12 and consistency with other statutes, and so on.

13 So they want as high a price as possible and
14 certainly consistent with the statutes and these other tests.
15 Whether that should turn out to be \$7.32 or some other number
16 depends on what happens in the industry, and a large number
17 of things.

18 In other words, if what you are trying to get me to
19 say is that the Coordinating Committee feels that \$7.32 is
20 the right price, this they do not feel.

21 Q They don't think it's high enough?

22 A They feel that the formula they are proposing is
23 the best answer in this particular circumstance, providing
24 the government doesn't take other remedial action that is
25 available to it.

444a

1 Q I believe that the cooperatives that you speak for
2 market their milk in such outlets that a great portion of it
3 is utilized as Class I, is that correct?

4 A That is correct.

5 Q You are mindful, of course, that the Minnesota-
6 Wisconsin Series Price is a mover of the basic formula price,
7 with respect to these Class I prices, is that correct?

8 A That is correct.

9 Q And you would want, at all costs, to preserve the
10 Minnesota-Wisconsin Series Price and not do anything that
11 would break that price or reduce its value, is that correct?

12 A They feel that dairy farmer incomes need to be high-
13 er and they are not in favor of lower Class I prices.

14 Q I think you might have indirectly answered my ques-
15 tion, but they would not want to do anything that would have
16 the effect of breaking or reducing the Minnesota-Wisconsin
17 Series Class I price, which is really the determinant, or the
18 mover, with respect to Class I prices, is that correct?

19 A Yes and no. If you go back to 1970, they favor an
20 economic formula rather than the M-W price, and the dairy prod-
21 uct component of one order was favored as coming from powder
22 prices, rather than the M-W price.

23 Additionally, the hearing in Clayton, Missouri,
24 last August and September, they proposed that there be floors
25 added which at times would bring a higher price than was

445a

1 yielded by the M-W Series, so that I don't want my answer to
2 infer that the Coordinating Committee members are completely
3 happy with the M-W Series.

4 Q To get back to my question, I realize the farmers
5 you represent have taken the position in certain areas obvious-
6 ly as a result of this hearing there is nothing in here for a
7 Class I price.

8 There is nothing here about an economic formula.
9 So my question again is this. Do your principals or the par-
10 ties for whom you speak, do they not want to be -- to assure
11 that nothing will result from this hearing that will erode or
12 break or refute the Minnesota-Wisconsin Series?

13 MR. CHERNOFSKY: Your Honor, I think he has answered
14 that question three or four times.

15 MR. COCHRAN: He has not answered the question,
16 Your Honor. He states -- he skirted around it. I wouldn't
17 say he is avoiding it, but he hasn't answered it.

18 JUDGE McALPIN: It seems to me it has been repeated
19 several times, too, Mr. Cochran. Have you answered it so far,
20 Dr. Johnson?

21 THE WITNESS: I thought I had answered it.

22 JUDGE McALPIN: If you consider you have answered it
23 six it is answered. Let's take a five-minute recess so that
24 we can send tapes over for daily copy.

(Whereupon, a short recess was taken).

1 JUDGE McALPIN: Back on the record, gentlemen. Dur-
2 ing the recess I was made aware that Mr. Moffitt is here, from
3 the Department of Agriculture, of the State of New Jersey.
4 Mr. Moffitt, do you want to enter your appearance at this
5 time?

6 MR. MOFFITT: Yes. I am Woodson W. Moffitt, Jr.,
7 the Director, Division of Dairy Industries, New Jersey Depart-
8 ment of Agriculture, Trenton, New Jersey. Thank you, Judge.

9 JUDGE McALPIN: All right, sir. Mr. Moffitt has
10 also brought the exhibits from the State of New Jersey that
11 contain the Notice of Hearing, the Order of Designation, and
12 a Certificate of Publication of the Notice, which we indicated
13 at the opening of the hearing we would reserve a spot to make
14 this a part of Exhibit No. 5.

15 Let the record now show that said documents are
16 received in evidence and identified as Supplement to Exhibit
17 X-5.

18 (The supplement to Exhibit X-5
19 is marked for identification and
20 admitted into evidence).

21 JUDGE McALPIN: We are now ready to proceed with the
22 cross-examination of Dr. Johnson.

23 BY MR. COCHRAN:

24 You referred, on page 13, to a speech made by
25 Dr. Johnson, in March, 1966. Do you agree with that that the

1 matter of milk marketing, under the Federal Orders and the
2 general economic conditions surrounding those matters have
3 changed greatly, comparing, say, today to 1965?

4 A. I think the statute is the same, but there have
5 been many changes in the milk industry since 1965.

6 Q. I believe there has been quite a distinct tightening
7 of milk supplies since 1965.

8 A. That's correct.

9 MR. COCHRAN: Your Honor, I believe for the time
10 being that concludes my cross-examination. I would like to
11 make this request of the Secretary, in view of the objections
12 I made.

13 Whether or not he will accede to my request, I do
14 not know, but I made some certain objections with respect to
15 certain material submitted by the witness. I am going to re-
16 quest that to the extent that the Secretary relies in any man-
17 ner or to any extent on the use of that material I objected
18 to, if he makes any use of that to support any findings of
19 fact with respect to this decision, I would request that he
20 specifically note the use of that particular material.

21 Whether he can comply to that or will comply to it
22 I don't know, but I would like to make that request in view
23 of the circumstances.

24 JUDGE McALPIN: Your statement and the request is
25 of record, and as to what he will do about it, I don't know

448a

1 and wouldn't dare to anticipate.

2 MR. COCHRAN: Thank you, sir.

3 JUDGE McALPIN: All right, sir. Are there further
4 questions of Dr. Johnson?

5 Mr. Flounders?

6 CROSS-EXAMINATION

7 BY MR. FLOUNDERS:

8 Q Dr. Johnson, in the event that your proposals are
9 not accepted and all manufacturing prices under the Northeastern
10 Orders are set by the Minnesota-Wisconsin Series, would it
11 still be a good idea to retain the seasonal factors in the
12 Orders, the seasonal adjustments, I mean?

13 A Yes, sir.

14 Q Do you not think that it would put handlers, both
15 proprietary and cooperative, at a particular disadvantage?

16 A Not particularly, sir.

17 MR. FLOUNDERS: That's all.

18 JUDGE McALPIN: Further questions? Mr. Hammerman.

19 CROSS-EXAMINATION

20 BY MR. HAMMERMAN:

21 Q Dr. Johnson, my first question is merely for clari-
22 fication. Page 2 of your prepared statement, in the first
23 full paragraph, is your conclusion there based on the assump-
24 tion you make on the previous page, that the Minnesota-Wiscon-
25 sin price be paid for milk?

1 MR. CHERNOFSKY: Mr. Hammerman, would you identify
2 the first few words of the paragraph?

3 MR. HAMMERMAN: The paragraph to which I am refer-
4 ring on Page 2 starts, quote, "In no months" unquote. My
5 question, Dr. Johnson, is what you say there is true, based on
6 the assumption you make on the previous paragraph; is that
7 correct?

8 THE WITNESS: I am simply describing what is in the
9 table, Mr. Hammerman. It does use the milk allowances as pre-
10 scribed by the order. Perhaps I don't understand your ques-
11 tion.

12 BY MR. HAMMERMAN:

13 Q Well, the negative result would come about only if
14 the Minnesota-Wisconsin Price Series were used; is that correct?

15 A Yes, that is correct.

16 Q I merely wanted to have that clarified. Dr. Johnson,
17 let's turn, now, to your first paragraph on Page 5. Towards
18 the end of your paragraph you mention, quote, "Thus making it
19 difficult for Northeast dairy cooperatives, manufacturing
20 butter and powder to break even." Unquote.

21 To the extent that milk for these products was also
22 used by proprietary handlers, they, too, would have a problem
23 breaking even; is that correct?

24 A That is correct. It might be different in degree,
25 depending to what extent balancing was being done by the

450a

1 different types of operators, but nevertheless it does present
2 a problem for proprietary handlers.

3 Q In addition to what we normally consider the balanc-
4 ing function, are you aware that there are a number of pro-
5 prietary handlers who contract for specific quantities of
6 milk all year round in cooperatives, and some instances where
7 they take output of plants on a contract basis?

8 A Yes.

9 Q And if those proprietary handlers can't come out
10 with the 48 cents they have a loss; would they not?

11 A That is correct.

12 Q In the interest of the proprietary handlers, that
13 loss comes out of their own funds; does it not?

14 A I presume so.

15 Q And in the instance of cooperative associations,
16 they reflect such loss in a lesser payment for milk to their
17 producers; is that correct?

18 MR. CHERNOFFSKY: Objection, Your Honor. I think
19 every cooperative handles the problem of its losses differently.
20 I don't think you can make an overall statement that would
21 cover all cooperatives.

22 MR. HAMMERMAN: I would be interested in Dr. Johnson's
23 opinion.

24 JUDGE McALPIN: I am going to let him ask the
25 question. But I think, Mr. Hammerman, we are getting back

into the procedure of making statements first and answers and then asking, "Isn't that correct?" I am not going to permit you to testify in the guise of cross-examining. Ask your questions, and if he has an answer, fine. But don't testify as part of the question.

He may answer this question as to whether or not the losses of cooperatives are reflected in lower payments to the producers.

THE WITNESS: How much money cooperatives have is one of the important factors reflecting what particular producers -- if one wants this, they have a greater or lesser loss, this doesn't mean that the producer price would be changed by that precise amount immediately.

But I go pretty much with Dad Mason's statement yesterday that a cooperative is a producer, and if they have less money, that's the situation. They have less money and they have to decide how to live with that.

BY MR. HARTSHORN:

Q Also, Dr. Johnson, if proprietary handlers find that over a long period of time they can't handle surplus milk, and come out, would that not result in more of that surplus handled by cooperative associations?

A That is correct. And that is what has been happening, over the past few years.

Q And you can foresee the eventualities of the

452a

1 cooperative facilities being inadequate to handle all of this
2 additional surplus, particularly in certain areas?

3 A. This could happen in the long run.

4 Q And it would also necessitate, would it not, the
5 construction of additional facilities to handle surplus?

6 MR. CERNOVSKY: At this point, Your Honor, I think
7 I am going to object. We are getting into the realm beyond
8 even supposition. I don't believe Dr. Johnson can state exact-
9 ly what would happen if production goes down.

10 Maybe facilities will be deficient; if production
11 doubles tomorrow, facilities won't be.

12 JUDGE McALPIN: I think we are belaboring the point,
13 too, Mr. Hammerman. I permitted him to answer the question
14 as to reflection of losses. He indicated that he agrees with
15 previous testimony that cooperatives are the producers. I
16 don't think we need to belabor the point, as to whether or not
17 the losses are reflected in producer payments.

18 MR. HAMMERMAN: That is not my point in this ques-
19 tion, Your Honor.

20 JUDGE McALPIN: Let's get to your point directly.
21 Let's quit going around Robin Hood's Barn to ask the question.
22 Ask him directly what you want to know. If he is going to
23 answer it, he will.

24 I don't think, I said yesterday and I am repeating,
25 that it isn't necessary to wrap up in the witness with the

453a

1 question. Let's ask it directly and get it over with and get
2 this hearing over with as quickly as we can.

3 MR. HAMMERMAN: All right, Your Honor.

4 BY MR. HAMMERMAN:

5 Q These additional facilities that you agree may be
6 necessary, would they not be costly to cooperatives and be
7 an economic waste if they parallel existing facilities of
8 proprietary handlers?

9 A I didn't answer the previous question to the effect
10 that cooperatives would build additional facilities. If they
11 are faced with a problem, they will appraise alternatives, and
12 take what course of action seems best.

13 If they make some foolish decision like building a
14 plant where it is not needed, they will pay for that.

15 Q And if they decide to move the milk considerable
16 distances to where milk otherwise would go to proprietary
17 handlers, that, too, would be economic waste; would it not?

18 A If they do so, why there will be adverse effects.

19 Q And these silly things to which you refer could
20 result in lower prices to producers; could they not?

21 A Certainly.

22 Q On Page 8 of your statement, please, near the very
23 bottom where you refer to Minnesota-Wisconsin Price Series,
24 reliability for Minnesota-Wisconsin Price Series as a Class I
25 price mover, even now questions are being raised as to its

454a

1 continued reliability. Unquote. In view of your statement
2 there, would you agree that we are not being realistic in
3 suggesting that we average in Minnesota-Wisconsin and the
4 butter-powder formula, if we feel that Minnesota-Wisconsin may
5 not last very long, as a reliable price series?

6 A No.

7 Q You realize that considerable time is consumed in
8 having a market order changed; is that correct?

9 A Yes.

10 Q And that when we find because of whatever evidence
11 you use in coming to your conclusion that the Minnesota-Wiscon-
12 sin Price Series may no longer be reliable, if we find that
13 it has no reliability at all or has a very low reliability,
14 can't you envision that we may be stuck with it for a consider-
15 able period of time before we can change the Class II price
16 market orders?

17 MR. CHERNOFSKY: I am going to object to that lengthy
18 question. I believe Dr. Johnson answered the question the
19 first time when he said no, and to use your apt phrase, we are
20 going around Robin Hood's Barn again to try to get him to
21 change his mind.

22 JUDGE McALPIN: Yes, I agree. We are not going to
23 argue and try to convince the witness. The Secretary is the
24 one who has to convince him as to what positions are being
25 taken, Mr. Haverman. You asked the question. The witness

455a

1 said no, he didn't agree. Then you are going to argue with him
2 to try to convince him. I doubt whether that is possible to
3 do in this hearing. Let's proceed.

4 BY MR. HAMMERMAN:

5 Q On Page 11 of your prepared statement, in your
6 middle paragraph, you make this statement, referring to
7 cooperatives at this point, quote, "They have effective and
8 costly programs for improving milk prices and dairy farmers'
9 incomes. The cost of these services is not borne by non-members."
10 End quote.

11 Are you familiar with the provisions of Order No. 2,
12 particularly the cooperatives payment provisions of the Order?

13 MR. PALMER: Your Honor, I am going to object at
14 this point, just in the interest of moving the proceedings
15 along. I think it is rather clear, from the rulings you have
16 made before, about these particular passages that this was
17 more or less in the nature of background material that the
18 witness is stating.

19 We are not here concerned with any provisions in
20 Order No. 2, other than the pricing provisions, as to the
21 surplus price. I don't think it is going to help us to reopen
22 this hearing up to all these things about cooperative payments,
23 etcetera.

24 MR. HAMMERMAN: May I be heard, Your Honor?

25 JUDGE MCALPIN: Yes, you may.

456a

1 MR. HAMMERMAN: The witness has gone pretty far
2 afield, as noted by Mr. Cochran, in discussing conditions in
3 Canada and England, and giving us a general, pretty general
4 dissertation of the problems of cooperatives and the need to
5 help them.

6 You permitted that to go into the record. Now in
7 a statement quite relevant to the issues in the markets we
8 are discussing. I think this is at least as pertinent as
9 anything he said in his direct testimony.

10 JUDGE McALPIN: Mr. Hammerman, I am going to sustain
11 the objection, however. I felt very good about the fact that
12 Mr. Cochran, after raising his objections to what he considered
13 to be irrelevant material, and outside the issues involved
14 here, did not belabor them on cross-examination.

15 I am not going to permit you to say that something
16 is irrelevant, and then seek to cross-examine extensively on
17 it. I don't think, either, that the statements made in here
18 with reference to things that are not involved in the Notice
19 of Hearing need to be cross-examined on simply because they
20 were stated.

21 The only things that are going to be taken into
22 consideration in arriving at a decision in this matter are
23 those relevant materials on which testimony and factual data
24 are produced. I am going to rule from now on that examination
25 questions that go beyond the issues in this case are going to

457a

1 be ruled out of order, and not properly presented and not prop-
2 erly a part of this hearing.

3 We are not going to spend the time taking up each
4 statement that a person said and admitting that it is not
5 relevant and then seeking details on it. Let's proceed with
6 relevant material questions, to the issues in the Notice of
7 Hearing.

8 The objection is sustained.

9 BY MR. HAMMERMAN:

10 Q On Page 12 of your statement, Dr. Johnson, in the
11 middle paragraph, beginning with the words, "As the 48 cent
12 margin" and so forth, would you agree with me that proprietors
13 ~~shipping~~ ^{shifting} their operations were sometimes compelled to do so
14 because they lost their market or part of their markets for
15 these products because of pricing?

16 A Yes. In their decision they took into consideration
17 profit and loss.

18 Q As a result of some of the proposals at this hearing,
19 such economic losses become greater, you would expect greater
20 shifting; is that correct?

21 A I would expect handlers to respond more or less
22 economically.

23 Q Should they decide to eliminate a substantial amount
24 of milk for use in the so-called soft products, then some of
25 that milk would probably wind up in the hands of cooperatives

458a

1 for manufacture into butter and powder; is that correct?

2 A Probably so.

3 Q And if a cooperative was handling that there would
4 be a low return to producers; is that correct?

5 A We are back where we were before. The cooperative
6 is a producer and if they get less money they go down less
7 money.

8 MR. HAMMERMAN: That's all, thank you.

9 J McALPIN: Other questions? Dr. Mathis.

10 CROSS-EXAMINATION

11 BY DR. MATHIS:

12 Q Dr. Johnson, I want to ask you one or two brief ques-
13 tions concerning the general conceptual basis of your proposal,
14 that is concerned with establishing what amounts to a separate
15 class for butter and powder, and a separate price level versus
16 the prices that would be charged to users in all other manu-
17 factured products.

18 Would this, considering the fact that your butter-
19 powder price being considerably lower than the price applicable
20 to the other products, would this provide an incentive for
21 handlers to manufacture milk into butter and powder for use
22 subsequently in a frozen dessert product, ice cream mix, or
23 some other so-called soft product that would otherwise have
24 brought forth a higher price than if the milk had been used
25 directly in the soft products.

459a

1 Would there be an incentive for handlers to take
2 that route?

3 A. Conceivably, there could be and this is something
4 that would need to be watched carefully. What I mean is that
5 if there is a different response to one cent a hundredweight
6 than to ten cents and a different response to ten cents as there
7 is to 50 and the responses differ as among handlers.

8 But there is no question that there is some certain
9 amount of substitution, and consequently this is a factor
10 that needs to be taken into consideration and observed and
11 possible adjustments by handlers followed closely.

12 DR. MATHIS: Thank you. That's all I have.

13 JUDGE McALPIN: Further questions, gentlemen? Mr.
14 Smith?

15 CROSS-EXAMINATION

16 BY MR. SMITH:

17 Q Dr. Johnson, on the basis of your long-time analysis
18 of the dairy marketing problems, would you say that if the
19 butter-powder subsidy were suspended or eliminated so that
20 all of the milk had to be paid for at the Minnesota-Wisconsin
21 price that this change by itself would give the manufacturers
22 of butter and powder a realistic opportunity to increase the
23 price they are getting for butter by ten or 15 cents a pound?

24 A No, I do not say that. Nor do I subscribe to that
25 or being a fact.

460a

MR. SMITH: That's all.

JUDGE McALPIN: Further questions? Mr. Miller.

CROSS-EXAMINATION

BY MR. MILLER:

Q At the bottom of Page 5 and the top of Page 6 of your statement you indicate that under certain conditions you feel it might not be necessary to request any amendment change in those orders.

JUDGE McALPIN: Mr. Miller, we have been over this ground. I didn't see you here, but we are not going to repeat it, sir. This statement has been questioned considerably, and Dr. Johnson has expressed his opinion with reference to it and it is all going to be a part of the record.

Do you have another question?

MR. MILLER: I have a question which, of course, you may outlaw if you feel it is out of order. I haven't asked it yet.

JUDGE McALPIN: I am trying to stop you from asking it. This section of the statement has already been questioned. There can't be that many questions asked about a statement of opinion, and this is not a part of his proposal.

Let's get on with something else.

MR. MILLER: May I ask the question --

JUDGE McALPIN: Mr. Miller I have ruled and I said that there will be no more questions on this part of his

461a

1 statement. It is not a part of the issue involved here.

2 MR. HAMMERMAN: I have one more question.

3 JUDGE McALPIN: Mr. Hammerman?

4 BY MR. HAMMERMAN:

5 Q Dr. Johnson, in reply to Mr. Cochran, with respect
6 to supports or prices generally being tilted towards cheese,
7 would you agree that the relative market prices currently of
8 cheese powder, cheese butter and powder, tilts the Minnesota-
9 Wisconsin Price even more towards cheese than the supports?

10 A Cheese prices are high, relative to almost any base
11 period, as compared with butter prices.

12 Q Would you agree even more so than the relative sup-
13 port levels?

14 A I don't know.

15 Q Let's illustrate. If you take the January price
16 paid, in Minnesota-Wisconsin, of \$8.35 and compare that with
17 the Green Bay price of cheese, there you see there is only a
18 two and a half cents difference between them, which would
19 indicate that prices --

20 MR. CHERNOFSKY: Objection, Your Honor. This is in
21 the guise of direct testimony again.

22 JUDGE McALPIN: I agree. The objection is sustained.
23 Mr. Hammerman, you persist in testifying. The witness said
24 he didn't know. I don't know how we can take what you are
25 going to say as being an acceptable fact for him to say that

462a

1 now he does know, unless you are going to put it in under
2 oath. You are welcome to do that. You may so testify.

3 MR. HAMMERMAN: The information that I intend to
4 bring to the attention of this expert is data that already
5 appears in the hearing record. I am not introducing anything
6 new.

7 JUDGE McALPIN: Sir, this expert says he doesn't
8 know. Let's leave it at that. He doesn't know. You have to
9 testify to give him the knowledge, and you are not under oath.

10 BY MR. HAMMERMAN:

11 Q Would you care to make the calculation of the return
12 on cheese in the month of January based on normal yields?

13 MR. CHERNOFSKY: Your Honor, we have already made all
14 the calculations we intend to testify on. I think to ask him
15 for anything in addition is beyond the scope.

16 JUDGE McALPIN: Counsel says the witness has made all
17 the calculations they intend to present. I can't force him to
18 make others.

19 MR. HAMMERMAN: Then I have nothing further.

20 JUDGE McALPIN: All right sir. It is now 11:52. We
21 will recess at this time for lunch, and return at 1:20.

22 (Whereupon, at 11:52 a.m. the hearing was recessed,
23 to reconvene at 1:20 p.m. this same day, Tuesday, February
24 26, 1974).

25

DIRECT EXAMINATION

BY MR. CHERNOFSKY:

Q Mr. Reid, would you please state your full name and address for the record.

A I name is Robert G. Reid. I reside at 15 Bogue (PH) Avenue, Batavia, New York.

Q You are employed by whom?

A O-AT-KA Milk Products, Incorporated situated at Cedar and Ellicott Streets, Batavia, New York.

Q You have a prepared statement you would like to read?

A I do.

MR. CHERNOFSKY: Your Honor, at this time, I would like to mark, for identification, a document consisting of 12 pages which contains numerous graphs and tables.

The title, on the first page, is "Total Class II Milk Available from New York State Orders 127 and 129, Compared to Milk from these orders processed by O-AT-KA, January, 1972-December, 1973".

I ask that it be marked collectively as Exhibit 23 for identification.

JUDGE McALPIN: Let the record show that the said document of 12 pages is marked for identification as Exhibit X-23.

Whereupon, the above-identified document was marked for identification as Exhibit X-23.

MR. COPELAND: If Your Honor please, what is the name of the document again?

MR. CHERNOFSKY: It is entitled "Total Class II Milk Available from New York State Orders 127 and 129".

MR. COCHRAN: Are there any copies of that available?

MR. CHERNOFSKY: No. I am sorry.

Again, we only had sufficient copies for exhibits.

JUDGE McALPIN: I will again offer you the opportunity of using the exhibits for reference during the testimony on your promise to return them.

MR. CHERNOFSKY: Mr. Reid, you are here to testify today on proposal number six on behalf of the O-AT-KA Milk Products Cooperative?

THE WITNESS: That is correct.

BY MR. CHERNOFSKY:

Q Would you please proceed?

A My name is Robert Reid. I am the Sales Manager of O-AT-KA Milk Products Cooperative, Cedar and Ellicott Streets, Batavia, New York. I have been in the employ of O-AT-KA Cooperative since April 1, 1966 and have handled the sales and marketing for the cooperative since that time.

1 O-AT-KA has a serious interest in these hearings
2 for two reasons: Number one, the Class II price in the Class
3 II orders for Rochester and -- is the same formula used in
4 Federal Order Two except for adjustment of price per hundred-
5 weight; Two, the supply area of the State Order, particularly
6 the expanded prospective New York State Order, overlaps exten-
7 sively in Western New York where some of the major manufactur-
8 ing plants processing Order II, Class II milk are located.

9 In addition to this, we are charged with the res-
10 ponsibility of balancing approximately 70 million pounds of
11 Federal Order II milk.

12 O-AT-ZA Milk Products Cooperative, Inc. was born
13 of necessity in the late 1950s to provide a home for milk on
14 those days that the milk did not have any utility to any other
15 handler.

16 O-AT-KA has grown by default as other handlers have
17 departed from the dairy industry.

18 Originally, O-AT-KA was a balancing plant for the
19 Rochester Milk Market as the founding cooperatives were two
20 producer coops operating in Rochester. Today, both of these
21 cooperatives have merged with others into Upstate Milk Producers'
22 Cooperative operating in Rochester and Buffalo, New York.

23 In addition to the Upstate Coop, O-AT-KA has as its
24 members and owners, the Niagara County Milk Producers who
25 operate in Niagara County and Niagara Falls, New York and the

1 Dairylea Cooperative which has plants both in Rochester and
2 Buffalo.

3 O-AT-KA balances the milk supply in the Western
4 New York State Orders 127 and 129, Rochester and Buffalo. We
5 also balance a very small portion of the Federal Order II milk.

6 Balancing plant operations are very difficult be-
7 cause of the peaks and valleys created by the production and
8 the demand for milk by other handlers.

9 Operating costs reflect this difficulty.

10 Prior to my presenting operating costs, I would
11 like to illustrate the peaks and valleys as created by the
12 variation in milk receipts which O-AT-KA is submitted to from
13 season to season, month to month, week to week, and day to day.

14 By doing this, I believe that you will have a
15 greater appreciation of the cost-volume relationship associated
16 with the balancing function in Western New York.

17 I would ask you to refer to Appendix Number One
18 which illustrates the Total Class II milk available from New
19 York State Orders 127 and 129 compared to the milk from these
20 orders processed by O-AT-KA from January, 1972 to December,
21 1973.

22 As you can readily see, we have a seasonal varia-
23 tion from the April, May, June months to the October, November,
24 December months and actually that is October, November, and
25 the first 15 days of December.

1 One might say that this is a spring-fall romance
2 for we are delivered large quantities of milk during the
3 spring and everyone loves us for providing a home for that
4 milk. During the fall, when the prices are rather attractive,
5 the milk disappears and follows those attractive prices.

6 This period of low milk receipts has a great in-
7 fluence on our product mix and marketing strategy. O-AT-KA
8 produces canned evaporated milk, butter, non fat dry milk, and
9 fluid cream and skim condense products.

10 Of course, the fluid cream can be unsalted butter
11 and the skim condense can be non-fat dry milk. So, basically,
12 we are a butter-powder plant with a little evaporated milk
13 which is limited to the availability of the fluid milk which
14 can be converted to evaporated milk each month.

15 In Appendix Number One, we see notice a decline in
16 the availability of Total Class II milk from 1972 to 1973 but
17 we can also see the decline of the balancing function which
18 O-AT-KA was asked to perform from 1972 to 1973.

19 From a high of 42.2 million pounds of milk in June,
20 1972 to a low of 5.3 million pounds in October, 1973.

21 I would ask you now to refer to Appendix Number Two
22 which illustrates for us the weekly milk receipts for the year
23 1972. Here we see very distinct peaks and valleys and we
24 notice the first peak arrived on Easter.

25 The second peak arrives on Memorial Day and this,

1 historically, has been the largest day of receipts for the
2 cooperative.

3 Following Memorial Day, with resorts opening and
4 the demand for fluid products and ice cream increasing and the
5 natural decline in the milk production cycle, our milk also
6 declines.

7 After Labor Day, the schools open and the pipelines
8 must be filled with half pints of fluid milk, ice cream, and
9 dairy food for the school lunch program.

10 The decline continues until Thanksgiving, at which
11 time we experience a small increase; the result of another
12 four-day weekend.

13 Our last increase of the year is during the Christ-
14 mas recess when the children are excused from school for the
15 holidays.

16 1973, on Appendix Number Three, follows pretty
17 much the same pattern with one exception; Easter and Memorial
18 Day are two equally high periods; Easter falling on the
19 17th week of the year and Memorial Day on the 22nd week of the
20 year.

21 The pattern of milk receipts at Thanksgiving and
22 Christmas are identical to 1972.

23 I have taken the liberty of calculating three months
24 of 1972 and three months of 1973 to illustrate for you the
25 variation in daily receipts of milk at C-M-T-KA. The first

1 month illustrated in Appendix Number Four is February, 1972.

2 You can see we have the four very distinct peaks,
3 each of these on Sunday. Twenty-nine days in February, we
4 have four Sundays. The very same pattern holds true in May,
5 1972 as illustrated in Appendix Five.

6 Again, the weekends are very high milk receipts;
7 the middle of the week, very low milk receipts. The long-term
8 trend is up as we are now in the period of flush production.

9 Appendix Number Six shows the volume of milk re-
10 ceived daily during October, 1972 and here we have long-term
11 trend downward as we are in a period of short supply but, again,
12 the pattern is the same; the milk arrives at O-AT-KA on week-
13 ends.

14 February, 1973 receipts are at a low level. The
15 pattern is the same; milk high on the weekends, low in the
16 mid-week.

17 Again, in May, 1973 the general trend is up for flush
18 production but the pattern remains constant.

19 In October, 1973, a month in which we received 5.3
20 million pounds of milk total, one million pounds of milk
21 arrived on four days; those four days being the four Sundays of
22 the month so O-AT-KA received 20 per cent of its milk on
23 four days and 80 per cent of the monthly total on the other
24 27 days.

25 As one would guess, our costs are relatively high

1 as is the fact with any balancing plant.

2 On Appendix Number Ten, I have prepared the relation-
3 ship between the per hundredweight cost of processing and the
4 monthly volume of milk handled by O-AT-KA for the period
5 January, 1972 through December, 1973. Also, I have prepared a
6 scattered diagram with this relationship plotted on Appendix
7 Number 11 and I suggest that you look at Appendix Number 11.

8 First, you will see the general trend. There are
9 some economies of scale at the higher volumes, however, at
10 lower volumes, the burden of the fixed overhead, the capital
11 invested, and the manpower required to operate the plant sends
12 the per hundredweight cost of processing skyrocketing upward.

13 The 48 cent make allowance in the butter-powder
14 formula is unrealistic in this balancing operation.

15 During April, May, and June of 1972, when milk
16 supplies were at an adequate level to justify O-AT-KA's physi-
17 cal assets, the processing costs exceeded the 48 cent make
18 allowance.

19 During the period of very short supply, the latter
20 months of 1973, 48 cents was insufficient compensation to perform
21 the marketing function required of O-AT-KA.

22 In October of 1973, we handled 53 thousand hundred-
23 weight of milk or 5.3 million.

24 As we pointed out earlier, over one million pounds
25 of that came on four Sundays. Our cost of handling that milk

1 was \$3.11 per hundredweight.

2 A comparison of the costs of and the return from
3 a hundredweight of milk used for butter-powder is illustrated
4 in Appendix Number 12.

5 For February, 1974, I have estimated these prices.
6 The cost of one hundred pounds of whole milk with a 3.5 per
7 cent butterfat based on the current Chicago butter market at
8 64 cents times 4.2 and the Chicago non-fat dry milk current
9 market at 56 times 8.2 for a total of \$7.28 less a 48 cents
10 make allowance for \$3.80, less a zone adjustment of five
11 cents plus a seasonal adjustment of two cents for a total
12 of \$6.77.

13 The revenue derived from a hundred pounds of whole
14 milk with 3.5 per cent butterfat is 4.2 pounds of butter at 65
15 cents which is the USDA 92A Market, New York. This is equal
16 to \$2.73; 8.2 pounds of non-fat dry milk at 56 cents is \$4.592
17 for a total revenue of \$7.322 less the processing cost of
18 \$1.06.

19 This was the actual cost per hundredweight of oper-
20 ating O-AT-KA in February, 1973. A loss of 40.8 cents is the
21 result of handling one hundred pounds of milk.

22 I mentioned evaporated milk and, in conclusion, I
23 would like to say that our January '74 Class II price is
24 \$6.90. This compares with an \$3.10 for Minnesota Wisconsin
25 with 3.5 per cent butterfat. The total difference is \$1.20.

1 The \$1.20 would be the increased cost of one case
2 of evaporated milk or 2.5 cents for 13 fluid ounce can.

3 As you all know, evaporated milk consumption in
4 the United States continues its gradual decline. I feel that
5 an increase of 2.5 cents would not improve the sale of eva-
6 porated milk.

7 Thank you.

8 Q Mr. Reid, do you have anything you want to add
9 to this prepared statement?

10 A Not at this time.

11 MR. CHERNOFSKY: Mr. Reid is available for cross
12 examination, Your Honor.

13 JUDGE McALPIN: Are there questions?

14 Do you want to have the tables entered.

15 MR. CHERNOFSKY: Either before or after. I would
16 request that you have the tables marked for identification as
17 Exhibit 23 and accepted in evidence.

18 JUDGE McALPIN: Without objection, the charts and
19 tables identified as Exhibit X-23 are now received in evidence.

20 Whereupon, the documents pre-
21 viously identified as Exhibit
22 X-23 were received in evidence.

23 JUDGE McALPIN: Are there questions of Mr. Reid?
24 Mr. Cochran.

CROSS EXAMINATION

BY MR. COCHRAN:

Q Mr. Reid, did your organization make any sales of butter on the New York Mercantile Exchange?

A No, sir. We do not.

Q Do you make any sales of butter on the Chicago Mercantile Exchange?

A No, sir. We do not.

Q Over what areas, geographically, do you generally market your non-fat milk powder products?

A Generally, from a fan-shaped area, starting at a point at Buffalo, New York spreading east over into New England and south to the area of Baltimore.

Q Could you tell me what price you are currently receiving for your butter per pound?

A The price per pound for butter is according to the New York 92% quotation each Friday.

Q You say based on that price plus a certain amount of money?

MR. CHERNOFSKY: Mr. Reid, I would like to explain to you that you do not have to answer that question if you do not wish to.

That may be confidential information.

THE WITNESS: I do not mind answering it.

The market is quoted on February 22nd by the Dairy

1 and Poultry Market News, Agricultural Marketing Service out of
2 the Office at Newark, New Jersey; it quotes 92 grade A butter
3 for three days each week, February 19, February 20, and February
4 22.

5 We do business based on the Friday price and that
6 price was 65 and a half cents per pound.

7 BY MR. COCHRAN:

8 Q Is that the total price you receive for your butter?

9 A In 68 pounds cubes, delivered to market; yes.

10 Q With respect to your non-fat skim milk powder,
11 what kind of price are you receiving for that currently?

12 A I can answer that question this way.

13 We attempt to get all the market will bear on any
14 given day that we are marketing powder. That would vary maybe
15 from the afternoon of today until tomorrow morning, depending
16 on the grade and type of powder we are selling.

17 Q What would be the range from the afternoon to the
18 morning?

19 A You want to give me a better example? There are a
20 lot of powders.

21 Tell me what kind of powder.

22 Q Is the powder that you make -- a portion of it made
23 from Grade A milk entirely?

24 A Is Grade A milk is used in this making, all of the
25 milk received in our plant is Grade A milk.

1 Q Then all of the non-fat milk product you make is
2 made from Grade A sources.

3 Is that correct?

4 A I believe that is correct.

5 Q Then you have, I understand, different grades of
6 powder within that grade.

7 A We have, just as the people in Michigan, to maxi-
8 mize our return, developed specialty powders which require
9 extra cost for which we obtain premiums.

10 Q What is the nature of the premium or the price for
11 that product?

12 A That varies and depends on the competitive nature of
13 that commodity with subsequent billing of other commodities.

14 We do business competing with powder from California,
15 Minnesota, Wisconsin, from Ohio, from Michigan, from the
16 Baltimore, Maryland area, and we are forced to be competitive
17 to the marketplace.

18 There are some instances when we can get a premium
19 for the powder by adding additional utility to that powder.
20 Of course, there is also the additional cost of adding th
21 utility.

22 Q Over what area do you market your condensed milk
23 products?

24 A The canned, evaporated milk is marketed in the same
25 geographical area as the non-fat dry milk. Again, that area is

1 from Buffalo, New York, fan-shaped into New England and south
2 to Baltimore.

3 Q Am I understanding you to say that you market some
4 powder in Michigan or am I incorrect?

5 A I said, like the Michigan people, we do attempt to
6 make specialty products.

7 Oh, I see.

8 That is all.

9 JUDGE McALPIN: Further questions?

10 Hearing none, thank you, Mr. Reid.

11 Whereupon, the witness, Robert

12 G. Reid, was excused.

13 JUDGE McALPIN: The next witness?

14 MR. CHERNOFSKY: Your Honor, at this point, I am
15 willing to yield again to Mr. Wagner who has a witness who
16 would like to go home.

17 JUDGE McALPIN: All right, sir.

18 MR. CHERNOFSKY: If that is agreeable to you.

19 I understand he is testifying on other proposals.

20 JUDGE McALPIN: All right.

21 Mr. Chernofsky has agreed to yield to Mr. Wagner.

22 MR. WAGNER: I call Mr. Vickrey as a witness and
23 the specific proposals he wants to talk about are proposal
24 Number eight and directly in point with those, are numbers
25 15 and 16.

1 Mr. Vickrey does have a short statement and he does
2 have exhibits.

3 Whereupon,

4 ELDIE VICKREY

5 was called as a witness and, having been first duly sworn by
6 Judge McAlpin, was examined and testified as follows:

7 DR. MATHIS: Your Honor, may I ask if there are
8 copies of the exhibits available?

9 MR. WAGNER: Yes.

10 When we identify the exhibits, I intend to hand
11 copies down to the distinguished auditors.

12 DIRECT EXAMINATION

13 BY MR. WAGNER:

14 Q Will you give us your name and residence, please?

15 A My name is Eldie Vickrey. I reside at 947 West-
16 minster Place, Dayton, Ohio.

17 I am employed as General Manager, Treasurer of
18 Miami Valley Milk Producers' Association with headquarters in
19 Dayton, Ohio.

20 MR. WAGNER: I believe it to be appropriate at this
21 time that we have these exhibits marked.

22 THE WITNESS: We have three exhibits; one is
23 entitled "Minnesota-Wisconsin-Butter-Powder Price with Com-
24 parison of the MW to Butter-Powder, 1972 to 1973."

25 MR. WAGNER: Are you providing sufficient copies to

1 the Judge?

2 THE WITNESS: We have another exhibit entitled,
3 "Indiana Marketing Area Order Number 49, producer receipts
4 and other source milk." It covers the years 1972 and '73
5 with January, 1974.

6 The third exhibit is "Ohio Valley Marketing Area
7 Order 33, Producer Receipts and Other Source Milk," covering
8 the years 1972, 1973, and January, 1974.

9 JUDGE McALPIN: Let the record show that the said
10 documents, identified as Minnesota-Wisconsin-Butter-Powder
11 Price, is marked for identification as Exhibit X-24.

12 Whereupon, the above-identified
13 document was marked for identi-
14 fication as Exhibit X-24.

15 JUDGE McALPIN: The document identified as Indiana
16 Marketing Area 49, Producer Receipts and Other Source Milk is
17 marked for identification as exhibit X-25.

18 Whereupon, the above-identified
19 document was marked for identi-
20 fication as Exhibit X-25.

21 JUDGE McALPIN: The document identified as Ohio
22 Valley Marketing Area Order 33, Producer Receipts and Other
23 Source Milk, is marked for identification as Exhibit X-26.

24

25

Whereupon, the above-identified document was marked for identification as Exhibit X-26.

MR. WAGNER: Would you proceed, please?

THE WITNESS: This statement is made on behalf of Central Valley Milk, Inc. whose members are Central Ohio Cooperative Milk Producers, Cincinnati Cooperative Milk Sales Association, Huntington Interstate Milk Producers, Milk, Incorporated, and Miami Valley Producers Association in support of Proposal Number Eight as it relates to Federal Order 33, and on behalf of Wayne Cooperative Milk Producers, Inc., Milk, Incorporated, and Miami Valley Milk Producers Association in support of Proposal Number 16, as it relates to Order 49.

The pricing provisions for Class III milk in Order 33 and Class II milk in Order 49 had provided a reasonable pricing structure until the past several months.

I would refer to Exhibit 24. As you note, for the year 1972, the relationship was reasonably close, ranging from a negative 13 to plus ten. In the first half of 1973, we had a fairly close relationship but, as we approached the fall, Minnesota Wisconsin exceeded the butter-powder, starting in October with 47 cents; 78 cents in November; \$1.13 in December; and, in January, it was \$1.18 higher. In other words, \$8.10 for MW and \$6.92 for the butter-powder.

The exhibit ²⁵~~49~~ was taken from releases by the market

1 administrator of Order 49 showing the producer receipts by
2 month and the other source receipts. As you can see, a total
3 milk, in 1972 -- the producer milk was a billion, nine hundred,
4 four plus a thousand and, in 1973, it had dropped by 38
5 hundred to 95 million pounds.

6 In January, in one month, comparing 1973 with 1974,
7 a hundred and 67 million, 987 thousand, 297, and a hundred and
8 54 million, 451,095.

9 The other source receipts, of course, include the
10 milk that was necessary to be brought in to supply the market
11 because there was not enough producer milk plus the other
12 source milk that might have been a part of the order because
13 of balancing operations; package goods and this sort of thing
14 could have gotten involved in the other source receipts.

15 As I said, these were taken from the market
16 administrator's reports and his milk equivalent so, if there
17 is any powder used in it, that would be converted back to a
18 skim milk equivalent.

19 The exhibit covering the Ohio Valley Area Order is
20 from the same source; the market administrator's reports within
21 the producer receipts and the other source receipts are shown.

22 Producer receipts have been dropping indicating
23 that the price had not generated enough producer milk until
24 January and there was some shifting around and another plant
25 became attached to the order so it just showed an increase in

1 producer receipts in January.

2 With the large exportation of grains to foreign
3 countries which started in 1972 and became a large factor in
4 feed costs required to produce milk in 1972 and 1973 and is
5 continuing into 1974; this, coupled with the administration's
6 importation of 265 million pounds of non-fat dry milk, some
7 84 to 85 million pounds of butter and butter substitutes, and
8 the importation of 64 million pounds of cheese in 1973 and an
9 additional 100 million pounds in January, 1974 in an attempt
10 to keep food prices to the consumer down, has placed the over-
11 all dairy industry in jeopardy.

12 While the imports have affected the butter price,
13 keeping it near the support price, the high price and the
14 limited availability of beef and other red meats has helped
15 develop a strong demand for cheese and the importation of large
16 quantities of foreign cheese has not been successful in forcing
17 down the price of cheese to the consumer.

18 Therefore, the demand for cheese has continued
19 strong which has increased the price cheese plants have been
20 paying for milk.

21 The opportunity to market the milk that is
22 classified either Class II or III to cheese plants at a higher
23 price than the cost under the present pricing provisions of the
24 two orders and has encouraged some milk to be attached to the
25 orders that is not always available for Class I use, but is

1 attached to the market to ride the pool.

2 We urge the amending of the orders as proposed in
3 Proposal Number Eight and Number 16.

4 This would increase the return to producers based
5 upon the use made of most of the milk.

6 Our proposal further provides that the skim milk
7 and butterfat used to produce non-fat dry milk and
8 butter should be priced at the butter-powder formula now pro-
9 vided in the Order.

10 During the heavy production months of April, May,
11 and June when it is impossible to market all of the excess
12 milk to be used in cheese operations, it is necessary to pro-
13 cess some milk into non-fat powder and butter.

14 The milk should be priced at the price for which,
15 by necessity, it is used. If the Orders are not amended, the
16 wide variance between the Minnesota Wisconsin and butter-
17 powder price will continue to provide the opportunity for
18 milk to be attached to the Order for pooling purposes, yet not
19 be readily available for Class I use.

20 It would be priced at the Class II or Class III
21 price and sold, most of the months, to a cheese operation at
22 a price somewhat higher than the cost under the Order.

23 It is our contention that the pricing provisions
24 of the Federal Orders should be such as to encourage any and
25 all milk that is to be pooled under the Orders be available

1 for Class I use.

2 Because of the buying habits of the consumer, it
3 is necessary to have somewhat larger quantities of milk than
4 was necessary ten or 15 years ago attached to the Order to
5 provide for the heavy bottling days.

6 Therefore, some weekend milk is by classified in
7 the lower classification and needs to be manufactured.

8 If that milk is used to produce other than butter
9 or non-fat dry milk, it should be priced at the Minnesota
10 Wisconsin series to help return to the producers the market
11 value of the use made of that milk.

12 We, therefore, urge the adoption of Proposals Number
13 Eight and Number 16.

14 BY MR. WAGNER:

15 Q Mr. Vickrey, is Proposal 15 identical or similar
16 in all respects to eight and 16, in terms of the issues of
17 this hearing?

18 A That relates to Order 36?

19 Q Yes.

20 A Yes, it is.

21 Q And the proponents of that proposal are included
22 in the proposals eight and 16 to which you have addressed your-
23 self; is that correct?

24 A Yes, they are.

25 Q Now, what is your statement as to advising the

1 Secretary and the people you speak for on the emergency issue?

2 A Because of the disparity in price, I would urge a
3 decision be made as promptly as possible; however, with the
4 reports we have had since we have been in Washington, it is
5 my feeling that these amendments or whatever decision the
6 Secretary writes should be made effective the same time the
7 Order 49 becomes effective.

8 Q When you talk "Order 49", you are talking about
9 Indiana and that area which was included in the number of
10 orders to the west.

11 Is that correct?

12 A It was part of the 39 order hearing; yes, sir.

13 Q Could all of this be done, in your opinion, by
14 April first?

15 A I would hope that it could. I do not know.

16 I do not know when it will be published in the
17 Federal Register but it would be my hope that it would become
18 effective April one.

19 Q Would you want it to be handled on a timely basis
20 so that the effective date is the same in Indiana as it would
21 be in the orders affected here?

22 Is that correct?

23 A Yes; because Ohio Order 33, the Ohio Valley Order,
24 parallels the Indiana Order. The line is basically the Ohio
25 Indiana line between the two Orders.

1 If we had one priced at a somewhat higher price
2 for Class III milk in Ohio, we would have a situation that
3 would not lend itself to orderly marketing.

4 Q You have no objection to emergency handling by the
5 Secretary, if he decides to use that route?

6 A No, I do not.

7 MR. WAGNER: I would ask that the Exhibits X-24,
8 25, and 26 be received in evidence.

9 JUDGE McALPIN: Without objection, the documents
10 identified as Exhibits X-24, X-25, and X-26 are now received
11 in evidence.

12 Whereupon, Exhibits X-24, X-25,
13 and X-26, previously marked for
14 identification, were received
15 in evidence.

16 MR. WAGNER: That is all.

17 JUDGE McALPIN: Are there questions?

18 CROSS EXAMINATION

19 BY MR. FLOUNDERS:

20 Q Mr. Vickrey, am I correct that X-26 is the Ohio
21 Valley Marketing Order 33, Producer Receipts?

22 A Yes, it is.

23 Q The column headed "Other Source Receipts" which, I
24 believe, were supplemental supplies that you bring in --

25 A That would be a part of it; yes.

1 That would not be all of it.

2 It would be all the other source milk as reported
3 to the market administrator.

4 Q Do you or some of the other cooperatives involved
5 in Order 33 -- do you bring some milk in from what I believe
6 is characterized as the reserve pool plants, the reserve
7 supply in Wisconsin?

8 A Yes.

9 Q What is the proper name of that?

10 A Associated Reserve Standby Pool.

11 Q Is there any particular plant that you get your
12 milk from or do you get it from several different plants?

13 A Are you referring to the milk we have to bring in
14 to supply the market?

15 Q Yes.

16 A It might come from any number; wherever the milk
17 was available in an extremely short time.

18 Some would come from other order plants and some
19 as unregulated milk. It comes from areas as far west as 150
20 miles west of Minneapolis.

21 Q Even though you got it through this reserve, the
22 same reserve pool?

23 A Yes.

24 Q Were those plants owned by cooperatives?

25 A All the milk that we received came from cooperative

487a

1 plants.

2 Q Can you give me the names of some of the coopera-
3 tive you procured milk from and if they were members ---

4 I am not interested in the local name. I am inter-
5 ested in the primary cooperative that controls those.

6 A I am not sure I follow what you are asking.

7 Q Can you give me the name of some of the cooperative
8 plants from which you secured milk?

9 A Some of them were Associated Milk Producer plants,
10 Lake to Lake (PH).

11 Q Any others?

12 A There were some others but this gives you an idea
13 as to where the milk was coming from.

14 Q Then these associated milk producer plants that you
15 procured this milk from were Grade A plants.

16 Is that correct?

17 A Right. Yes, sir.

18 Q Do you know if associated milk producers also have
19 Grade B plants?

20 A No, I do not.

21 Q Do you know if associated milk producers also oper-
22 ates any cheese plants?

23 A I believe they do.

24 Q Do they operate any butter-powder plants?

25 A I do not know.

1 Q And you do not know whether or not they operate
2 any Grade B plants?

3 A No, I do not.

4 Q You say you receive milk from Lake to Lake Coopera-
5 tive.

6 Do they operate any fluid milk, Grade A plant?

7 A I do not know.

8 The milk that was available for supplemental milk
9 supplies came from a milk supplier with IMS rating.

10 Q Do you know if Lake to Lake operates any Grade B
11 plants?

12 A No, I do not.

13 Q You do not know anything about them at all, then?

14 A No.

15 Q Is any of this other source receipts that you brought
16 in milk needed for manufacturing or is it all fluid milk?

17 A It was not needed for manufacturing.

18 In the other source, of course, was powder that
19 was used for standardization, milk moved on the weekend from
20 one Order to another.

21 As a matter of information, maybe to attempt to get
22 at what you were attempting to get at -- and I am not sure
23 what your point was -- there are plants in Indiana which are
24 regulated -- or, in Ohio, regulated by Order 49 that some
25 of the weekend milk not needed for Class I, in order to handle

1 the milk, would move to a plant regulated under 33 and would,
2 therefore, be other source milk so that makes up part of that,
3 too.

4 MR. FLOUNDERS: That is all I have.

5 JUDGE McALPIN: Are there other questions?

6 Mr. Cochran.

7 BY MR. COCHRAN:

8 Q Mr. Vickrey, is Central Valley Milk, Inc. a corpora-
9 tion or is that a federation of cooperatives?

10 A It is a federation of cooperatives incorporated in
11 the State of Ohio.

12 Q How many cooperative associations belong to that
13 federation?

14 A The ones I named.

15 Q The total number of producers who are qualified
16 "producers" under Order 33 -- what portion of that total number
17 is represented by Central Valley Milk, Inc.?

18 A About 80 plus per cent.

19 Q With further reference to the figures for other
20 source receipts in Exhibit 26, do some of these cooperative
21 associations that you are speaking for operate combined supply
22 plants and manufacturing operations?

23 A We do.

24 They are not combined. We have our balancing plant
25 in order 33 which is just that. It is a balancing plant.

1 I believe that the plant in Cincinnati owned by
2 Cincinnati Cooperative Milk Sales does some balancing in that
3 plant.

4 Q And the plant to which you refer are recognized or
5 qualified as pool plants under order 33; is that correct?

6 A Yes.

7 Q I believe you are saying that, at some time, milk
8 moves into those orders that actually was priced as producer
9 milk from nearby orders.

10 Is that correct?

11 A It could be; yes.

12 Q Then, by virtue of that, this milk we are talking
13 about is other source milk under Order 33?

14 A Yes.

15 Q Those quantities are included in this tabulation in
16 Exhibit 26 under the heading "Other Source Receipts"?

17 A Yes.

18 Q If I gather your testimony correctly, in the
19 opinion and judgment of Central Valley Milk, Inc., the
20 Minnesota Wisconsin series price is the appropriate price
21 to apply to Class III milk, except for that milk used in
22 butter and powder manufacture.

23 Is that right?

24 A Right.

25 MR. TOOMEY: If Your Honor please, I object and

1 move that question be stricken.

2 We have heretofore asked the material on which
3 the Minnesota Wisconsin price series be based be made a part
4 of this record because it was only sensible to determine whe-
5 ther it was appropriate as a price mover.

6 In view of the request before, I would like to
7 reiterate that request.

8 I understand Your Honor has ruled previously that
9 this material could be produced by the Department if it saw
10 fit and you cannot order it but, so long as the record is
11 barren of that kind of information, I think a question such
12 as the last one and the answer to the last one should be
13 stricken from the record.

14 On the other hand, if Your Honor would order him
15 to produce the information, I withdraw my objection.

16 JUDGE McALPIN: I am not going to strike it from
17 the record.

18 I think, if there is any lack of weight to it be-
19 cause of the absence of something else in the record, certainly
20 that will be recognized but, once it is in the record, it can
21 stay in there and it will be properly weighed.

22 The motion to strike is denied.

23 You may proceed, Mr. Cochran.

24 BY MR. COCHRAN:

25 Q I gather, from your testimony with respect to the

1 effective data of the change in Order 49; are you motivated,
2 with respect to that testimony, on the basis of the competi-
3 tive situation that exists because the area to which you are
4 testifying is contiguous with the order 49 marketing area and
5 market?

6 A A one word answer to that would be yes; however,
7 as we prepared the testimony for this hearing, we did not
8 have the news release that we have since received since we
9 have come into this hearing.

10 Having received that news release, then I made my
11 statement that I would like to see those at the same time
12 for the reasons that you mentioned.

13 Q You appreciate the necessity for having these
14 Class I and other class prices upon the Orders, particularly
15 the nearby Orders, properly aligned.

16 Is that correct?

17 A I would like to see all class prices aligned so
18 that blend prices can be fairly closely aligned, too.

19 Q Does your particularly cooperative association
20 market any product or any non-fat milk powder?

21 A Yes, we do.

22 Q Do you sell any of your butter-powder on the Chicago
23 Mercantile Exchange?

24 A No.

25 Q Do you sell any on the New York Mercantile Exchange?

1 A No, we do not.

2 Q Over what area, generally, geographically is your
3 butter-powder marketed?

4 A What we would term the "midwest"; Ohio, maybe
5 part of Michigan, Indiana, some in the south, the edge of
6 New York State, Pennsylvania.

7 Q Do you market any in the southwest?

8 A No.

9 Q Do you go into Tennessee with it?

10 A Not recently; we have not sold any in Tennessee.

11 Q In Kentucky?

12 A Not recently.

13 Q Over what area, generally, is your non-fat skim
14 milk powder product marketed?

15 A Some of the same are except, from time to time,
16 non-fat is sometimes sold in Florida.

17 Q Could you give me any information as to the price
18 you are currently obtaining for that non-fat milk powder pro-
19 duct?

20 A Only that the prices -- our butter is based on the
21 Chicago Mercantile Market. It goes up and down with that.

22 Powder is a competitive product; again, those
23 prices are pretty much established by the Chicago pricing.
24 Our powder is all Grade A powder.

25 Q Do you, at times, receive a price for that powder

1 higher than the powder price utilized in these Federal Order
2 provisions?

3 A The one in the Federal Order is a monthly average.

4 Q Yes.

5 A I think, as others have indicated, the powder price
6 would change throughout the month. If the market went up or
7 went down, we would move with it.

8 Q Have you ever sold any at a price higher?

9 A That what?

10 Q That the powder price we are talking about used in
11 the Order.

12 A Yes.

13 Q How much higher?

14 A I do not know. I would not want to attempt to give
15 you a figure because the market could change.

16 To give you an example of why I am not going to
17 get pinned down, in the first place, I do know that that would
18 add materially to the record but, secondly, if the Secretary
19 changed the support price in the middle of the month, that
20 would reflect but that would be a part of the average of the
21 Chicago powder market that would be used in computation of the
22 Federal Order.

23 Q I thought perhaps we could eliminate the midwestern
24 changes and you could answer me outside of that.

25 Have you given me all the information you feel you

1 ought to give me?

2 A Yes; I feel all that is needed for the record.

3 Q In your marketing of butter, on any occasion, have
4 you obtained a price higher than the so-called Chicago Butter
5 Price?

6 A We do not sell butter by the carload.
7 We print all of our butter.

8 Q Can you still answer the question?

9 A Of course, we get more than carlot prices in
10 Chicago. We sell it by the truckload or carload of printed
11 butter.

12 Q You make a little profit, do you?

13 A We like to make some for our members; yes, sir.

14 MR. COCHRAN: That is all I have.

15 JUDGE McALPIN: Further questions.

16 Mr. Oman.

17 BY MR. OMAN:

18 Q Mr. Vickrey does your association, or any of those
19 you are representing here today, operate a cheddar cheese
20 operation or cottage cheese operation?

21 A No, they do not -- cottage cheese operation; yes,
22 but not cheddar cheese. No hard cheese.

23 The cottage cheese is part of a fluid operation. It
24 is not a separate operation. It would be the normal sales of
25 cottage cheese in connection with a fluid operation.

1 Q That a side operation to a fluid plant?

2 A No.

3 It would be just a part of the fluid milk operation
4 of the cooperatives that are operating fluid milk pool distri-
5 buting plants as part of their sales to supply a customer with
6 milk.

7 This is part of it so, to the extent they had
8 cottage cheese sales to their customers, fluid milk would be
9 the requirements of their customers.

10 Q Could you tell us what your cost of production of
11 cottage cheese in this plant would be?

12 A No, I cannot.

13 We do not make cottage cheese in any plant I am
14 directly connected with and I do not know the cost of it to
15 any of the other members.

16 Q So, in a like manner, you would not know what the
17 effect -- let's say \$1.18 per hundredweight cost of milk
18 would be to the cost of cottage cheese in this plant?

19 A Order 33, cottage cheese, priced at Class II --
20 under Class II in Order 33, is the MW plus ten cents so this
21 would have no affect.

22 MR. OMAN: I have no further questions.

23 JUDGE McALPIN: Further questions, gentlemen?

24 BY MR. TOOMEY:

25 Q Mr. Vickrey, in response to the question asked by

1 Mr. Cochran on which my objection was overruled, you indicated
2 you thought the Minnesota Wisconsin price was an appropriate
3 price to pay for milk used in manufacturing products.

4 Is that correct?

5 A Yes.

6 Q Are you familiar, sir, with the sources from which
7 that price was derived?

8 A In a very vague way -- it is a price that we have
9 accepted in the industry for a period of time, the Department
10 of Agriculture has accepted it, it is published every month,
11 and I am willing to accept it.

12 We put that in as part of our proposal.

13 Q You are aware that there are some sources around
14 requesting --

15 Do you, unlike the rest of us, know specifically
16 from what sources that price series is derived?

17 A I do not know.

18 Q So, I take it, then, your testimony is based upon
19 this general acceptance you mentioned?

20 A That is correct.

21 Q In the three orders to which your testimony per-
22 tains, do the prices in all three orders for milk used in
23 manufactured products, based upon the lower butter-powder or
24 Minnesota Wisconsin --

25 A As of today; yes.

1 Q Referring to your Exhibit 24, if your proposal
2 were accepted by the Secretary and, referring to the last
3 column, December, 1973, the price the ice cream manufacturer
4 would have to pay for milk would be substantially increased;
5 would it not?

6 A Yes.

7 Q In fact, that differential is greater today than
8 it was in December; is it not?

9 A Yes.

10 That last one we had is \$1.18, as indicated on the
11 bottom of the exhibit.

12 Q Perhaps you said it and I missed it.

13 Are you an economist yourself, sir?

14 A No.

15 Q Have you had available or reviewed any documenta-
16 tion with respect to the price elasticity or inelasticity of
17 ice cream?

18 A No.

19 Q Are you aware that there are or it is expect there
20 will be in the near future non-dairy substitutes for ice
21 cream?

22 A There have been some in the past.

23 Q Would it not be fair, sir, to say that, if the
24 price for milk, although it may be very good for the farmer,
25 is so high that the product cannot be marketed, that the

1 farmer really does not benefit, nor does the coops.

2 Is that a fair statement?

3 MR. COPELAND: Just a minute. I raise an objection
4 there.

5 That is based on a premise which is not in the re-
6 cord here.

7 The question presupposes that the price, if it were
8 adopted by the Secretary, would be so high -- perhaps Mr.
9 Toomey would like to rephrase his question.

10 MR. TOOMEY: I think, Your Honor, when we are con-
11 sidering what the proper price is going to be, we ought to
12 find out what the effect of that price is likely to be and I
13 think when there is a witness on the stand advocating a certain
14 formula, we are entitled to know whether he has studied what
15 the potential effects may be on the market.

16 MR. COPELAND: That is all well and good but, Mr.
17 Toomey is characterizing the witness' statement, his testi-
18 mony.

19 JUDGE McALPIN: I think the witness is able to
20 discern whether or not it is in line with his testimony.

21 He may answer, if he can.

22 The objection is overruled.

23 THE WITNESS: The MW price is in a great number of
24 orders in the United States presently. There are tremendous
25 amounts of ice cream manufactured in which the manufacturer is

1 paying Minnesota Wisconsin price for it and it seem to sell
2 so it is my opinion that our proposal would certainly not
3 price it out of the market.

4 BY MR. TOOMEY:

5 Q Are you aware as to whether the cost of production
6 in those areas is the same or differs from the cost of produc-
7 tion in the Orders which are the subject to this hearing?

8 MR. COCHRAN: Your Honor, may I suggest a clarification?
9

10 "Cost of production" of what?

11 MR. TOOMEY: Of ice cream.

12 THE WITNESS: I do not know whether the cost of
13 production is greater or less than the labor costs might be
14 so as to offset any difference in cost of material.

15 I do not know.

16 MR. TOOMEY: I have no further questions.

17 REDIRECT EXAMINATION

18 BY MR. WAGNER:

19 Q Mr. Vickrey, to clear up the matter of manufacturing
20 prices, it is apparent there is a difference in Class II and
21 Class III in the Orders you are talking about and the Class II
22 and the Eastern Orders -- would you indicate --

23 MR. TOOMEY: Excuse me, Your Honor.

24 I cannot hear the question down here.

25

1 BY MR. WAGNER:

2 Q Can you indicate the items that are in Class II?

3 I am asking the witness if he would indicate what
4 is in Class II in Indiana and Ohio to distinguish them from
5 the Order Two, for example; specifically cottage cheese.

6 Could you enlighten us on that?

7 A The Indiana Order 49 -- presently there are only
8 two classes. ^{Fluid} ~~Both~~ products are in Class I, of course, and
9 cottage cheese and the other items are in Class II.

10 In Ohio Valley, Order Number 33, there are three
11 classes in Class II, the creams and cottage cheese, fluid
12 milk being Class I and the other items class II.

13 Basically, in Eastern Ohio-Northwestern Pennsylvania
14 the Order follows the same line; cottage cheese is in Class II
15 which has for its price the MW plus a dime and I believe that
16 is order 36 also and, in Indiana, as of today, cottage cheese,
17 milk would be priced at the Class III price or the lower of
18 the MW or butter-powder.

19 Q In your case, you are accepting the Indiana order
20 and intend to operate on it, as announced by the Secretary?

21 A As we understand it -- what it might be. I do not
22 know.

23 MR. WAGNER: That is all.

24 JUDGE McALPIN: Mr. Flounders.

25

1 RECROSS EXAMINATION

2 BY MR. FLOUNDERS:

3 Q Mr. Vickrey, do you have a copy of Exhibit Four
4 that was put into the record by the Government at the beginning
5 of this hearing?

6 A I have Exhibit Seven.

7 Q I guess it is Exhibit Seven and I am talking about
8 the table that was for Federal Order Number 33.

9 A Table Seven, Order 33?

10 Q Yes.

11 A I have it.

12 Q Under the column headed, "Cottage Cheese", you
13 notice there is a substantial decline in the pounds disposed
14 of by two handlers during 1973 from 22 million pounds in
15 January to 14 million pounds in December.

16 Are you aware of any particular changes in the
17 market that could account for that decline?

18 A I guess I would have to say no. I think there was
19 a handler who changed their type of operation but I do not
20 know this to be a fact.

21 Q I am, very frankly, inquiring whether there is a
22 handler or some shipper handling operations to explain that
23 situation or whether it is a fair assumption that it is a
24 decline in sales.

25 A I appreciate that and I wish I could answer it.

1 I did not see this Exhibit. I did not ask the
2 market administrator for the information. I wish I could
3 tell you.

4 MR. FLOUNDERS: Thank you.

5 That is all.

6 JUDGE McALPIN: Any further questions?

7 Hearing none, thank you.

8 Whereupon, the witness, Eldie

9 Vickrey, was excused.

10 MR. VICKREY: May I make one statement, please?

11 I would like to thank the people who gave us an
12 opportunity to get on this evening and also you, Your Honor,
13 for permitting us to get our testimony in.

14 JUDGE McALPIN: You are certainly welcome.

15 Do you have more, Mr. Chernofsky? You may resume.

16 Whereupon,

17 GEORGE W. O'BRIEN

18 was called as a witness and, having been first duly sworn by
19 Judge McAlpin, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. CHERNOFSKY:

22 Q Mr. O'Brien, will you state your full name and by
23 whom you are employed, please?

24 A My name is George W. O'Brien. I am employed by
25 Dairylea Cooperative, Inc. of Pearl River, New York as an

1 Economist.

2 Q Mr. O'Brien, would you tell us something of your
3 education and professional background, please?

4 A Yes.

5 I have a Bachelor of Science Degree in Agricultural
6 Economics from Cornell University and a Master of Science from
7 Rutgers University, also in Agricultural Economics.

8 I have been employed by Dairylea Cooperative for
9 almost 25 years, working in the area of market orders and pric-
10 ing.

11 Q Mr. O'Brien, you have some tables you would like
12 to introduce today?

13 A Yes, I do.

14 Q Were these prepared by you or at your direction?

15 A Yes, they were.

16 MR. CHERNOFSKY: Your Honor, at this point, I would
17 like to offer these tables. There are thirteen tables in
18 all -- collectively, and have them marked for identification
19 as Exhibit X-27.

20 The title on the first table is "Table Number One,
21 Butter Production, 1,000 Pounds".

22 JUDGE McALPIN: Let the record show that said docu-
23 ment, containing 13 pages, consisting of tables, is marked
24 for identification as Exhibit X-27.

25

1 Whereupon, the above-identified
2 document was marked for identi-
3 fication as Exhibit X-27.

4 BY MR. CHERNOFSKY:

5 Q Mr. O'Brien, will you proceed?

6 A These tables were prepared to show seasonality of
7 production in the northeastern Federal Order markets, as com-
8 pared to the production situation in the Wisconsin and Minne-
9 sota area.

10 The first table, entitled "Butter Production",
11 shows the production of butter in actual pounds, in thousands
12 of pounds, that is, for Vermont, New York, Pennsylvania, and
13 Ohio, as contrasted to Wisconsin, Minnesota, and the United
14 States as a whole.

15 It can be seen, from this table, that the produc-
16 tion of butter in the northeast is substantially lower than
17 that in the Wisconsin Minnesota area.

18 The second table shows the seasonal variation of
19 production of butter in these states and for the United
20 States, as a whole, and it can be seen, from that table, that
21 the seasonal variation of production in the northeast is
22 substantially greater than that for the midwestern areas of
23 Wisconsin and Minnesota and for the United States, as a whole.

24 For example, in 1973, production of butter in New
25 York State in May was double the annual average and it fell to

1 30 per cent of the annual average in the month of September.
2 This is contrasted to Wisconsin and Minnesota which only
3 went to figures like 27 per cent and 36 per cent over their
4 annual average in the month of May and then only went down to
5 about 40 per cent below their annual level which is the extreme
6 in Wisconsin in September.

7 The third table shows the production of non-fat dry
8 milk for human food production; again, for the same states of
9 Vermont, New York, Pennsylvania, Ohio, Wisconsin and Minnesota,
10 and the United States.

11 Here, again, the production of non-fat dry milk in
12 the northeast, as can be seen from the table, is substantially
13 lower than that for the Minnesota Wisconsin area.

14 The fourth table, again, shows the seasonal varia-
15 tion of this non-fat dry milk as produced in the northeast
16 showing a much greater degree of seasonal variation; parti-
17 cularly in New York State which is the larger of the producing
18 states of non-fat dry milk in the northeast; going up to a
19 figure as high as 232 per cent of its annual average in June
20 and down to a figure as low as 20 per cent of its annual
21 average in November.

22 This, again, is contrasted to the seasonal varia-
23 tion in the midwestern states.

24 The fifth table shows the production of American
25 cheese for Vermont, New York, Ohio, Wisconsin, Minnesota, and

1 the United States, as a whole. This also shows how the produ-
2 tion of cheese in the northeast is substantially lower than
3 that in the midwest.

4 The production of cheese has been increasing, as is
5 shown for the areas.

6 I should point out that the previous tables showing
7 butter and non-fat dry milk showed a substantial decrease in
8 the production of milk going into butter. For example, butter
9 production in New York State in 1972 was 45 million pounds
10 and it decreased by more than half, to only 20 million pounds,
11 in 1973, reflecting a substantial decrease in production in
12 the northeast.

13 Table six shows seasonal variation in production of
14 cheese in these several states of Vermont, New York, and Ohio,
15 as contrasted to Wisconsin, Minnesota, and the United States,
16 as a whole. There is a greater degree of seasonal variation
17 in the New York area, as is shown by the seasonal table, but
18 the seasonal variation is not nearly so great as that for
19 butter and non-fat dry milk.

20 Table seven shows the producer receipts used to
21 manufacture butter, skim milk, powder, and other Class II
22 products under New York-New Jersey marketing area similar to
23 that entered by the Government at an earlier time in the hear-
24 ing.

25 These are producer receipts used to produce these

1 items and the figures under the "butter" column would be in
2 pounds of cream and, under the "skim milk Powder", that would
3 be pounds of skim milk.

4 Table number eight shows similar data -- table
5 seven, showing the seasonal variation for the New York-New
6 Jersey Federal Order -- what can be seen here is the seasonal
7 variation of producer receipts used in butter and skim milk
8 powder and that it is substantially greater than all the
9 seasonal variation in the producer receipts used to produce
10 all other Class II products.

11 Table number nine shows similar data for the Boston
12 Regional milk marketing area with the milk used to produce
13 butter and non-fat dry milk and other class II products.

14 Here, again, it can be seen that there is a de-
15 crease in milk going into butter and non-fat dry milk and
16 that the volume of milk used in the other Class II products
17 remains relatively stable.

18 Table number ten shows the seasonal variation of
19 the data in table number 11. Again, the seasonal variation of
20 the milk used in butter and non-fat dry milk is substantially
21 greater than that used in the other Class II products.

22 Table number 11 shows similar data for the eastern
23 Ohio-western Pennsylvania milk marketing area. The Class II
24 products, which are priced separately from the Class III, are
25 shown in the lefthand column.

1 Butter and non-fat dry milk are separated out of
2 the Class III category and the pounds of milk used in these
3 items are substantially lower than in all other categories of
4 Class III.

5 The volume of milk going into non-fat dry milk has
6 decreased substantially over the last few years.

7 Table number 12 shows seasonal variation. Again,
8 it can be seen that the seasonal variation of milk going into
9 butter and non-fat dry milk is substantially greater than the
10 seasonal variation used to produce the other Class III products.

11 Table number 13 shows the milk used to manufacture
12 American-type cheeses in the Boston Regional, New York-New
13 Jersey, and eastern Ohio-western Pennsylvania areas.

14 This shows the pounds of milk used to produce
15 American cheese. It also shows the seasonal variation of that
16 production for the years 1971, '72, and '73 to the extent
17 possible.

18 The seasonal variation of production of the hard
19 cheese is not nearly so great as the variation in production
20 of butter and non-fat dry milk.

21 I think that is all I have.

22 MR. CHERNOFSKY: Your Honor, at this point, I would
23 like to request that the exhibit, number X-27 for identifica-
24 tion, be received in evidence.

25 JUDGE McALPIN: Without objection, the table

1 identified as Exhibit X-27 is now received in evidence.

2 Whereupon, the document pre-
3 viously identified as Exhibit
4 X-27, was received in evidence.

5 MR. CHERNOFSKY: Mr. O'Brien is available for cross
6 examination.

7 JUDGE McALPIN: Are there questions?

8 Mr. Wildason.

9 CROSS EXAMINATION

10 BY MR. WILDASON:

11 Q Mr. O'Brien, in the tables, where would the dry
12 whole milk appear in your statistics?

13 A Which table are you referring to?

14 Q The table which shows the use of cream and skim
15 milk in the Boston Regional Order; the last table that you
16 referred to -- excuse me.

17 Table Number Nine.

18 A That would be in the third column, Class II, other
19 than butter and non-fat dry milk.

20 Q Would that figure be whole milk or milk and cream
21 or skim milk?

22 What would that be?

23 A To make whole milk powder?

24 Q The Class II milk, other than butter and non-fat
25 dry milk; is that figure in terms of fluid milk, fluid skim,

1 skim and cream?

2 I am not being critical. I am just trying to find
3 out.

4 A It would be all of those.

5 Q A combination of all of those fluid products?

6 A Yes.

7 Q If a dry whole milk powder was made by the use of
8 cream and not fluid skim milk, would it still show up in that
9 column?

10 A Yes, sir.

11 Q Thank you very much.

12 JUDGE McALPIN: Mr. Cochran.

13 BY MR. COCHRAN:

14 Q Does your organization, Dairylea, manufacture any
15 butter or non-fat dry milk powder?

16 A I think we do manufacture some non-fat dry milk
17 powder. I am not too familiar with the corporate structure of
18 CMA.

19 Most of our manufacturing operations have been
20 turned over to Mr. CMA and Mr. Roberts was the witness for
21 CMA yesterday.

22 Q Do you have any information with respect to the
23 price CMA obtains for the butter manufactured by CMA?

24 A No, I do not.

25 Q Do you have any of that information with respect to

1 non-fat skim milk powder?

2 A No.

3 Q Do you have any information as to the geographical
4 areas in which those products, manufactured by CMA, are mar-
5 keted?

6 A It is generally the northeastern section of the
7 United States.

8 MR. COCHRAN: That is all that I have.

9 JUDGE McALPIN: Mr. Hammerman.

10 BY MR. HAMMERMAN:

11 Q Mr. O'Brien, it appears from your tables that there
12 is a greater seasonality factor in the northeast on butter and
13 powder than there is on other manufactured products.

14 Is that correct?

15 A That is what I said.

16 Q Would it be feasible for the market order to set
17 up a separate seasonality pattern for butter and powder than
18 for any other products in Class II? Would that compensate for
19 the costs necessary because of the greater seasonality?

20 A I think that is what part of the seasonality is
21 that we have in the orders at the present time.

22 Q In view of the fact that the pattern is different
23 or more pronounced for butter and powder than for other pro-
24 ducts, do you think perhaps a solution to this or compensation
25 for this would be a different seasonality --

1 MR. CHERNOFSKY: Objection, Your Honor.

2 Mr. O'Brien has stated, in supporting Dr. Johnson's
3 testimony, exactly what our proposal is and I do not think Mr.
4 Hammerman has the right to cross examination to suggest to him
5 other types of proposals, other types of seasonality factors
6 and ask him, would he adopt those.

7 He stated what his testimony is and that is it.

8 JUDGE McALPIN: All right, sir.

9 MR. HAMMERMAN: May I be heard?

10 JUDGE McALPIN: Yes, sir.

11 MR. HAMMERMAN: It appears that the entire import
12 of the witness' statement is a comparison of seasonality
13 factors. That appears to be the point that the witness is
14 attempting to make here; disparities in seasonality factors.

15 I think it is very germane to his testimony that I
16 ask whether there could be a method of handling this disparity
17 other than what is suggested.

18 MR. CHERNOFSKY: Dr. Johnson has suggested and given
19 testimony on the seasonality factor. Mr. O'Brien has said
20 that he is here to support Dr. Johnson's testimony and I think
21 nothing further need be said.

22 For Mr. Hammerman to suggest other possible solu-
23 tions is the province of Mr. Hammerman's direct testimony if
24 and when we ever see any.

25 JUDGE McALPIN: I am not going to have a rehash of

1 what we have already had.

2 If this is a question that should have been asked of
3 Dr. Johnson, I am not going to permit the attempt to introduce
4 it again with a witness who has not testified with regard to
5 it.

6 Seasonality factors; yes, they are included in this
7 testimony but if you want to put in something as a different
8 and better proposal, Mr. Hammerman, I suggest you be sworn and
9 do it as part of testimony.

10 MR. HAMMERMAN: That is all I have.

11 JUDGE McALPIN: Further questions?

12 Mr. Miller.

13 BY MR. MILLER:

14 Q Mr. O'Brien, on your table number seven; first I
15 want to make sure of the understanding of the figures in the
16 column to the extreme right.

17 If we look at the year total in each case, does it
18 mean that the total in the extreme right column is greater
19 than the total of the first and second column added together?

20 A That is what it shows.

21 Q Does it mean that there is more milk used to make
22 the products, other than the products referred to in the first
23 two columns; namely, butter and skim milk powder?

24 A Not necessarily.

25 Q I want to make sure I understand the way these

1 figures are presented to us and, perhaps, you can give a little
2 word of explanation again that would make it clearer to us.

3 For example, Mr. O'Brien, you refer to pounds of
4 cream in the first column and I do not think you refer to
5 pounds of cream in the last column.

6 A I said that could be pounds of cream, pounds of
7 milk or pounds of skim milk.

8 Q Is there more whole milk involved to make all the
9 products in the last column than in the first two columns
10 added together?

11 A I would think so.

12 Q The size of the numbers in the last column are
13 very large in my digestion of what you have to tell us in
14 relation to those in the first two columns.

15 I am concerned about the possibility that, if there
16 should be disturbance in marketing conditions resulting from
17 change in Class II pricing in order II, as to whether or not
18 the physical facilities now existing in the plants of all
19 handlers together operating in Order Two, are these physical
20 facilities large enough to absorb all the milk in your last
21 column if it had to be made into butter and powder?

22 A I do not know.

23 You are giving me an assumption that I am not
24 following.

25 Q It is not an assumption, sir.

1 A You said if they have stopped making soft products,
2 the coops will make butter-powder and I do not buy that.

3 Q I did not make the assumption, sir.

4 I said, if it should happen.

5 Is that an assumption?

6 Well, what are the limits of the physical facilities
7 now existing in plants operating in Order Two, in your opinion,
8 as to the ability to expand -- excuse me, the ability to
9 absorb more pounds of cream into butter than your experience
10 shows for the years given on your table?

11 How much further could these present facilities
12 be taxes?

13 A I do not think I understand the question.

14 Q Could we make double the amount of butter in the
15 present facilities now existing in plants operating in Order
16 Two?

17 A I think I showed the statistics indicate that, in
18 New York State, the production of butter dropped by more than
19 50 per cent last year from the previous year.

20 Q I do not see a 1973 record on this page.

21 A If you go back to table one, this is for New York
22 State as a whole. The reduction of butter in 1973 was 20
23 million pounds, in 1972, it was 45 million pounds.

24 While this includes butter not necessarily manu-
25 factured under Federal Order Two, it fairly well coincides

1 with this.

2 Q Some of the milk for Order Two might have been
3 turned into butter outside of Order Two manufacturing plants.

4 A There are other milk producing plants in New York
5 State not necessarily under Federal Order Number Two. It
6 could be under the state or Federal Order Number 36 or the
7 New England markets.

8 Q Which was the biggest year of butter production,
9 then?

10 Is it on table one that you are directing me to?

11 A The biggest year shown on this table would be 1971
12 when it was 48 million pounds in New York State.

13 Q Let's look at what was available, what was in your
14 last column on table seven for 1971.

15 I ask you if the butter production of 1971 could
16 have been -- could it be doubled today with the present
17 facilities now existing in a manufacturing plant operating in
18 Order Number Two?

19 A First I call your attention to the fact that this
20 table is for '72 because the data for '73 is not available.

21 What was your question, again? Could it be
22 doubled as to what it was in 1972 over that?

23 Q You said 1971 was the highest production year.

24 Is that correct, for butter, in Order Two?

25 A That is what I said, for New York State.

1 That is shown on table one but, when you go back
2 to table number seven, it indicates the production in 1970
3 was greater than it was in 1971.

4 Q You pick out for me the year in which you think
5 there was the highest level of butter production, for order
6 two milk; be it 1971, '72, or any other year that you can
7 point to?

8 A On the data right here, it says 1970. I do not
9 have any data that goes back further than that with me.

10 Q Can you tell me if, in the present existing manu-
11 facturing facilities in Order Two, they can physically double
12 the amount of butter that was made in 1970 and make it now?

13 A I do not know.

14 Q What was the highest year of skim milk powder
15 production, according to your tables?

16 A This, again, would be 1970.

17 Q I ask you the same question with respect to physi-
18 cal ability to -- the amount of skim milk production.

19 A I give the same answer.

20 Q Am I right in saying that, when I look at the last
21 column on the page, there is more than enough milk that was
22 used in other uses that would be available and, perhaps,
23 forced into the production of butter and powder if the pro-
24 posed amendments are adopted?

25 A If you think everybody is going to stop buying

W-105

1 milk for Class II use, that is numerically possible but not
2 probable.

3 MR. MILLER: That is all for the moment.

4 JUDGE McALPIN: Any further questions?

5 Hearing none, it is now 4:50.

6 We will recess until tomorrow morning at nine
7 o'clock.

8 Whereupon,

9 At 4:50 P. M., Tuesday, February 26, 1974, the
10 hearing was adjourned to reconvene at 9:00 A. M., Wednesday,
11 February 27, 1974.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

EXCERPTS OF TRANSCRIPT OF PROMULGATION HEARING HELD ON
FEBRUARY 27 and 28, 1974 (pp. 520a-766a)

I think now we are ready, Mr. Chernofsky, to take
your next witness.

MR. CHERNOFSKY: Mr. Oman.

Whereupon,

ELTON L. OMAN

having been duly sworn by the Chief Administrative Law Judge
was called as a witness herein and was examined and testified
as follows:

DIRECT EXAMINATION

BY MR. CHERNOFSKY:

Q Mr. Oman, would you please state for the record
your full name and by whom you are employed and in what capa-
city?

A My name is Elton L. Oman, representing Cabot Farmers
Cooperative Creameries, Inc, Milton Cooperative Dairies Asso-
ciation and St. Albans Cooperative Creamery, Incorporated.
I am with Green Mountain Cooperative Federation.

Q Mr. Oman, would you please give us a brief descrip-
tion of your educational and professional background?

A I received a Bachelor of Arts and Master of Arts
degree in economics from the University of Colorado, in
Boulder, Colorado, and went on to work for one year in the
Office of Market Administrator, Connecticut Federal Order No.
15.

And for the last four years, up until October, 1973,

521a

1 I was employed as an agricultural economist on the Order
2 Formulation Staff of the Dairy Division, AMS, U.S. Department
3 of Agriculture. In October, 1973, I began my current employ-
4 ment with the Green Mountain Cooperative Federation.

5 Q In addition to your prepared statement today, you
6 have a series of four exhibits, which consist of two sets of
7 tables and two graphs. Were these prepared either by you or
8 under your direction?

9 A By me, yes.

10 Q Would you proceed with your statement?

11 A My purpose today is to present some information on
12 costs of operating a balancing and manufacturing facility
13 in basically fluid milk market. Due to circumstances beyond
14 my control, however, my remarks will be limited to the opera-
15 tion of the manufacturing facilities of Cabot Farmers Cooper-
16 ative in Cabot, Vermont.

17 Operating expenses can be analyzed in a variety of
18 ways. The way I did it was to separate them into fixed and
19 labor costs and into variable costs. The objective was to
20 determine the fixed and labor costs and relate them to the
21 total supply of milk handled by the cooperative and also to
22 relate them to the volume of milk processed, manufactured,
23 through the plant.

24 The costs that were considered variable were adver-
25 tising, laboratory supplies, manufacturing supplies, packages

1 and liners, and whey disposal expense. It can be argued
2 that there are other variable expenses, labor, for instance.

3 However, labor only becomes variable when the plant
4 gets to a relatively high percentage of its total capacity,
5 which it seldom does. During the rest of the year, if the
6 plant is operated at all, it takes a certain labor force to
7 do it regardless of the actual volume going through the plant.

8 MR. CHERNOFSKY: Your Honor, at this point we would
9 like to have marked as Exhibit X-28 for identification the
10 first table, which does not in itself have a title, but the
11 caption on the first set of columns is, quote, "On all milk
12 handled".

13 In the second group it is "On manufactured milk".
14 It is for the period from January, 1972 through October, 1973.

15 JUDGE McALPIN: Let the record show that the said
16 document is marked for identification as Exhibit X-28.

17 (The item referred to was marked
18 for identification as Exhibit X-28).

19 THE WITNESS: From Exhibit 28, Column 1, it can be
20 seen that the fixed and labor costs varied from a low of 57.7
21 cents per hundredweight in January, 1972, to a high of
22 \$1.048 per hundredweight in August of 1973 for all milk received
23 by the cooperative.

24 The average fixed and labor costs for the ten-month
25 period, January through October, 1973, was 86.1 cents per

523a

1 hundredweight. This means that during 1973 each 100 pounds of
2 milk handled by Cabot, fluid or manufactured, had to generate
3 86.1 cents in gross margins just to cover the fixed and labor
4 costs of the business.

5 In addition to this, milk that was used for manufac-
6 turing had to generate income sufficient to cover its variable
7 costs. The variable cost per hundredweight for all milk re-
8 ceived is also shown on Exhibit X-28, Column 2.

9 There is essentially no variable costs associated
10 with the sale of bulk milk to the fluid market. Therefore, all
11 of the variable costs are associated with and must be borne
12 by the manufactured milk.

13 For example, in September, 1973, Cabot shipped about
14 60 percent of its milk to the fluid market. Therefore, 40
15 percent of the milk was used for manufacturing and thus had
16 to carry the full variable cost burden of 58.4 cents. See
17 Exhibit X-28, Column 4.

18 Therefore, each hundredweight of milk used for manu-
19 facturing had to carry in September 91.1 cents of fixed and
20 labor costs in September plus 58.4 cents of variable costs, for
21 a total operating cost of \$1.495 per 100 pounds of milk manu-
22 factured in the plant.

23 MR. CHERNOFSKY: Your Honor, at this point we would
24 like to offer -- to have marked for identification as Exhibit
25 X-29 another table, entitled "Product". It shows cheddar

524a

1 cheese, cottage cheese and butter.

2 JUDGE McALPIN: Let the record show that the said
3 document is marked for identification as Exhibit X-29.

4 (The item referred to was marked
5 for identification as Exhibit
6 X-29).

7 THE WITNESS: I would like to explain right here,
8 Columns 6 and 7 have no title. Those columns would represent
9 the -- Column 6 would be net margins per hundredweight of
10 manufactured milk, or to put it another way, it would be
11 gross profit from Column 5, minus total costs, when such costs
12 are spread over all of the milk handled.

13 Column 7 would be net margins per hundredweight of
14 manufactured milk, when the total costs are subtracted from
15 the gross profit of Column 5. But the variable costs are
16 spread only over the manufactured milk.

17 I point this out because there is a difference there,
18 and I will talk about it a little later. Exhibit 29 shows
19 the gross and net profits by product for the month of Septem-
20 ber, 1973, given the net cost of the milk input, yield of
21 product per hundred pounds of milk, and the market value of
22 the products produced and sold.

23 Column 7 shows the net profits per hundredweight of
24 milk manufactured into the particular product after deducting
25 the total operating costs that must be spread over the volume

1 of milk that is actually manufactured, \$1.495 per hundred-
2 weight, from Column 5, Exhibit X-28.

3 Column 6 shows the net profits per hundredweight
4 of milk when the total operating costs are spread over all of
5 the milk handled, which includes the bulk milk shipped to the
6 fluid market. Column 7 is the relevant column, however,
7 since as was stated earlier, 91.1 cents applies to all milk
8 handled and the 58.4 cents variable costs apply only to the
9 milk used for manufacturing and really should not be spread over
10 all the milk handled as was done in Column 6.

11 Now that we have arrived at this point it can be
12 seen very readily from Column 7, Exhibit X-29, what a change in
13 the cost per hundredweight of milk, Column 1, Exhibit X-29,
14 would mean in terms of net operating margins, Column 7, for
15 this plant, on a product by product basis.

16 For example, in September had the cost of Class II
17 milk as shown in Column 1 been 50 cents per hundredweight
18 higher than it actually was cheddar cheese would have shown a
19 17 cent loss per hundredweight of milk, cottage cheese margins
20 would have been \$1.164 per hundredweight of milk instead of
21 \$1.664, and butter would have shown a loss of 97.7 cents per
22 hundredweight of milk, instead of 47.7 cents unless the market
23 prices for the various products increased accordingly.

24 The point to be made here is that balancing plants,
25 such as Cabot's and others, have certain operating costs that

526a

1 must be covered if the plant is to stay in business and con-
2 tinue to serve the market and dairy farmers. The profit mar-
3 gins and thus the existence of such plants are inversely re-
4 lated to the cost of the raw milk they are required to process
5 in order to balance the market supply of milk and are directly
6 related to the market prices of the products manufactured.

7 If the cost of the raw milk input increases, ceteris
8 paribus, the operating margins of the plant rapidly decrease
9 or their losses rapidly increase. On the other hand, as the
10 market prices for the products produced increase, overall,
11 the price of the milk going into the products may be increased
12 without jeopardizing the future of the plant and, in turn,
13 the cooperative.

14 You cannot pay more for milk going into dairy prod-
15 ucts than you can get for the products out of the market,
16 after deducting operating expenses, and expect to stay in busi-
17 ness very long.

18 Now, it goes without saying that Cabot's philosophy
19 is to sell as much milk into the fluid market as possible.
20 Such milk goes for the applicable Class I price plus a handling
21 charge that varies all over the place, depending on market
22 conditions, services performed for the buyer, type of supply
23 contract, return services performed for Cabot by the buyer,
24 etcetera, etcetera.

25 Cabot's average bulk milk handling fee in September,

1 of 1973 was about 31 cents per hundredweight, however. In
2 effect, this might be termed as the gross profit on 100 pounds
3 of bulk milk. At first glance it would appear that bulk
4 milk is a very profitable operation for Cabot because they
5 have to do practically nothing for the 31 cents per 100
6 pounds, it is all profit.

7 However, to earn that 31 cents they are foregoing
8 the opportunity of earning as high as \$3.159 per hundredweight
9 of milk in cottage cheese and \$1.825 per hundredweight in
10 cheddar cheese. And, what is particularly important is that
11 the average handling fee for bulk milk falls 60 cents below
12 the average fixed and labor cost of 91.1 cents for handling
13 100 pounds of milk for Cabot, fluid or manufacturing.

14 When Cabot sends an additional truckload of milk
15 into the fluid market for Class I use, it has a very negligible
16 effect on the blend price when it comes back to the farmer
17 because the increase is spread over all farmers in the market-
18 ing area.

19 However, if Cabot were to retain that truckload of
20 milk and process it through their plant the benefits would be
21 spread over the few hundred members of Cabot cooperative and
22 would have a significant effect on them.

23 An example of how the mix of fluid and manufacturing
24 milk can affect Cabot can be shown as follows: In September
25 Cabot shipped about 60 percent of its receipts to the fluid

528a

1 market as bulk milk. If we consider that this milk returned
2 about 31 cents per hundredweight to Cabot, the fixed and labor
3 costs of such plant would be reduced by 31 cents times the
4 hundredweights of bulk milk involved.

5 The remaining fixed and labor costs would then
6 have to be spread over the manufactured milk run through the
7 plant. In September this would have resulted in a fixed and
8 labor cost figure of \$1.804 per hundredweight of manufactured
9 milk handled.

10 Now, if we arbitrarily reduced the amount of bulk
11 milk shipped to the fluid market in September to 35 percent, as
12 opposed to 60 percent, total dollars returned by the handling
13 fee on bulk milk would be less, the fixed and labor costs
14 would be reduced less, but the pounds of manufactured milk
15 run through the plant would be increased such that the fixed
16 and labor costs of the plant would be reduced to \$1.234
17 per hundredweight of manufactured milk.

18 This is a cost savings of 57 cents per hundredweight
19 of milk run through the plant. Therefore, while Cabot attempts
20 to get as much milk as possible into the fluid market, it does
21 so at a cost that is borne by the balancing facilities and the
22 manufactured milk run through their plant.

23 This brings up the problem of seasonality of milk
24 production and fluid milk sales and the effects of such on the
25 costs of maintaining balancing and manufacturing facilities

529a

1 in a fluid milk market.

2 While Exhibit X-28 does not show very well the
3 effects of seasonality on costs per hundredweight, mainly
4 due to the rapid rise of all costs in the last year or so,
5 we all know that such effects exist.

6 The foregoing calculations, however, do show quite
7 emphatically one way in which the volume of milk run through
8 the plant affects its costs. When the volume of such milk was
9 increased from 40 percent of receipts to 65 percent the fixed
10 and labor costs per hundredweight of manufactured milk were
11 reduced 57 cents.

12 When more milk is run through a plant, average costs
13 per hundredweight of milk decrease, up to a point, and vice
14 versal. With a given supply, the more milk shipped to the
15 fluid market the less there is left to run through the plant
16 and absorb the fixed and labor costs associated therewith.

17 Now, without quantifying the effects of seasonality
18 on per hundredweight costs, I would like to offer as exhibits
19 two graphs. One depicting the seasonality of receipts versus
20 milk manufactured into various products in Cabot's plant.

21 The other one depicting the plant capacity available
22 at Cabot for cheese manufacturing on a one shift basis versus
23 actual utilization of such capacity.

24 MR. CHERNOFFSKY: Your Honor, at this point we would
25 like to offer these two previously described graphs, and have

1 them marked for identification as Exhibit X-30 and Exhibit
2 X-31.

3 JUDGE McALPINE: Let the record show that said docu-
4 ments are marked for identification as Exhibit X-30, that is
5 the one indicating receipts from producers, and the graph in-
6 dicating capacity per plant on a one shift basis is marked
7 for identification as Exhibit X-31.

8 (The items referred to were marked
9 for identification as Exhibits
10 X-30 and X-31).

11 MR. HAMMERMAN: May I ask a question before it is
12 submitted? Your percentage of capacity graph is noted as being
13 for cheese. Does that include both cheddar cheese and cottage
14 cheese?

15 THE WITNESS: Right.

16 I think this would be a good point, on Exhibit X-30,
17 the one showing the season producers, I avoided showing volume
18 figures here, but the percentages of volumes manufactured are
19 receipts from producers by months. I will read those into the
20 record right now.

21 This would be the percentage of manufactured milk
22 run through the plant, the percentage of the receipts from
23 producers, starting with January, '71, it was 51 percent.
24 February, 56 percent. March, 57 percent. April, 71 percent.
25 May, 75 percent. June, 79 percent. July, 65 percent.

531a

August, 44 percent; September, 25 percent; October, 45 percent; November 32 percent; December, 35 percent; January, '72, 42 percent; February, 46 percent; March, 46 percent; April, 67 percent; May, 64 percent; June, 73 percent; July, 61 percent; August, 54 percent; September, 53 percent; October, 41 percent; November, 37 percent; December, 47 percent; January, '73, 44 percent.

February, 47 percent; March, 42 percent; April, 51 percent; May, 57 percent; June, 60 percent; July, 51 percent; August, 39 percent; September, 40 percent; and October, 39 percent.

These two graphs depict very clearly the seasonality that exists between producer receipts and fluid sales. That milk which does not go to the fluid market must be manufactured into Class II products. Exhibit X-30 shows that when receipts are greatest fluid sales are at their low point.

Thus more milk must be run through the manufacturing plant. When receipts are lowest in the fall and winter months, fluid sales are at their peak. Yet, even in the months of shortest production substantial volumes of milk must be manufactured into various Class II products.

Once again, for example, in September, 1973, one of the short production months, Cabot had to manufacture 40 percent of its producer receipts; in October, 39 percent.

Exhibit X-31 shows Cabot's capacity for cheese

1 manufacturing on a one shift basis and the actual utilization
2 of that capacity. As can be seen, due to the seasonality
3 of milk production and fluid sales, and overall declining
4 production this year, there is considerable idle capacity at
5 this plant during several months of the year.

6 Idle capacity costs money and these costs are borne
7 by the milk that is put through the plant. To the extent
8 that idle capacity exists, for whatever reason, the processing
9 costs of the milk that is put through the plant is increased.

10 Yet, as shown by these two exhibits, some balancing
11 and manufacturing facilities are needed every month of the
12 year. But with the market prices of the manufactured products
13 given, these increased costs associated with plant capacity and
14 seasonality severely limit the amount that can be paid for the
15 milk going into manufacture.

16 In short, it can be seen very clearly that balancing
17 facilities are needed in these markets every month of the
18 year, not just during the flush season. To be sure, however,
19 this is the season of greatest need and such facilities must
20 be available for these months, i.e. March, April, May, June
21 and July.

22 But there are costs involved in maintaining these
23 facilities to balance the market throughout the year and only
24 as much return can be derived from the products produced at
25 any given time. If the cost of the milk that must be put

through these plants are increased beyond what the market will bear, the future of such balancing facilities will be placed in great jeopardy. This is particularly true with respect to butter and powder operations in the market.

So, whatever decision is issued as a result of this hearing, I sincerely hope that the real need for balancing facilities in the Northeastern markets and the costs of maintaining such facilities is given serious consideration and attention.

MR. CHERNOFSKY: Mr. Omer, do you have anything else that you would like to add to your statement?

THE WITNESS: Yes, I have a few comments. I want to go to Exhibit 29. I only point out that on the cheddar cheese column, under Column 3, it shows the value per pound of cheese of 31.2 cents.

This is what we get for the cheese in September. September is one of your short production months, and during this period of the year, it is sometimes possible to get a premium above the normal market for cheddar cheese, because of the tight supplies.

However, in the flush months when milk is readily available it is very hard, sometimes, to get over the normal market price for cheddar cheese. The actual market price for this cheese in September was around 30.7 cents per pound, I think.

Therefore, if you took the actual market value, which is an average, and used here, instead of what we actually got for the cheese, net margins in Column 7 would be reduced even less.

I just have a few comments that I would like to say about the overall Proposal No. 6. In regards to the averaging of the Minnesota-Wisconsin and the snubber price. We feel this is not only a short-term but a long-term position.

We feel it is a good pricing technique, as opposed to either the butter-powder snubber or the Minnesota-Wisconsin. One reason, of course, is the general feeling that the Minnesota-Wisconsin is becoming less and less representative and there is less manufactured milk around.

That the less we rely on this and tie it to an actual market product, such as the butter-powder market, the more reliable the price will be. Secondly, over a time, it would not really matter whether the M-W or the snubber was the higher of the two prices, over a given period of time, looking at the history of the M-W and snubber relationships.

It would balance out for awhile. Perhaps other people who are on the Minnesota-Wisconsin Series would have a slight advantage, perhaps. This, once again, depends on costs and at times when the butter-powder formula yielded a price greater than the average of the two.

The people manufacturing butter and powder might

1 have a slight advantage, once again, depending on costs.
2 But overall, at a given time period, we feel that these would
3 balance out, and the current state of disequilibrium in cur-
4 rent prices we do not feel can last forever and will sooner or
5 later work themselves out in the marketplace.

6 Thirdly, we feel that given, for example, the cottage
7 cheese market and the recent decline in the sales of cottage
8 cheese and apparent resistance to increased prices of the
9 product, and this is, perhaps, going to happen with cheddar
10 cheese, too, that the marketability of these products will be
11 seriously hampered if we jump all the way to an M-W price,
12 which, in January, would mean \$1.18 per hundredweight of
13 milk, namely the cottage cheese.

14 That would be approximately five cents per pound
15 for cottage cheese. Whereas, if we took an average of the
16 two, we would be able to return a little bit more to the farm-
17 ers, which is always our objective.

18 Yes it would not increase our cost per pound for
19 cottage cheese to two and a half cents per pound, about half
20 of what the M-W price would, and would not, at the same time,
21 kill the cottage cheese market.

22 I think that's all I have.

23 MR. CHERNOFSKY: Your Honor, I would first move that
24 exhibits marked for identification as 28, 29, 30 and 31 be
25 admitted into evidence.

536a

1 MR. SMITH: Question.

2 JUDGE McALPIN: Yes, sir.

3 MR. SMITH: I don't find anything to quarrel about
4 on the figures in these exhibits, but on exhibit 29 in partic-
5 ular, it would seem to me for that exhibit to be meaningful
6 for the Secretary or anybody else, that it should be completed
7 by putting captions at the top of the last two columns of
8 figures that have nothing over them, and possibly a title as
9 well as the date to which it applies.

10 I know this is all explained in the statement, but
11 you can't tell it from the exhibit itself.

12 MR. CHERNOFSKY: Your Honor, if that will make Mr.
13 Smith happy, at recess we will mark the copies for the Secret-
14 ary. I think they are sufficiently explained in the testimony,
15 but there is no objection to writing some more titles on them.

16 JUDGE McALPIN: I don't know that it is a real prob-
17 lem, because I doubt seriously whether the exhibits would be
18 considered separately, without being considered as part of the
19 testimony.

20 Actually, an exhibit is really supplemental to the
21 testimony given. The explanations in the testimony referring
22 to the exhibit, the person who is actually going to act on it
23 ought to have the testimony and the exhibit before him at the
24 same time.

25 The explanations are in the text. If there is a

537a

desire to put titles on those two columns, I would certainly be happy to pass the exhibits back for that purpose, but I don't consider that it is absolutely necessary.

MR. PALMER: Your Honor, if titles are going to be put on them, I wonder if the witness would be so kind as to give us those titles now, so the record will be complete.

MR. CHERNOFSKY: The titles on those columns were explained into the record and they are also in the written statement.

MR. PALMER: Maybe I could just ask Mr. Oman one question to clarify. Your next to the last column, Mr. Oman, do you have a suggested title for that?

THE WITNESS: Yes. I would say "Gross margins minus total costs spread over all milk", really, therefore, "Net margins".

MR. PALMER: And the last column?

THE WITNESS: Seven would be "Gross margins minus total costs and variable costs spread only over manufacturing milk, yielding net margins per hundredweight."

MR. PALMER: Mr. Smith also asked if you had a title for the entire exhibit.

THE WITNESS: "Net Margins on a Product by Product Basis, September, 1973".

MR. PALMER: Fine. And you would, then, mark them that way later?

538a

1 MR. CHERNOFFSKY: If that is what turns you on.

2 MR. PALMER: That's what turns me on.

3 MR. HAMMERMAN: May I ask a question on the same
4 exhibit, please? Mr. Owen --

5 JUDGE McALPIN: Hold that just a minute. In light
6 of the discussion that is now in the record, do I hear any
7 objections to Exhibits X-28 through 31 being received in evi-
8 dence?

9 DR. MATHIS: Your Honor, a similar question as we
10 have just been discussing with respect to the graph on the
11 next page. There is no title on it and there is no indication
12 as to what the numbers along the vertical scale is in the
13 graph.

14 THE WITNESS: In this 30 or 31?

15 DR. MATHIS: It's the first graph you have attached
16 to your statement.

17 THE WITNESS: "Receipts from Producers and Volumes
18 Manufactured at the Cabot Plant"?

19 DR. MATHIS: That's the one.

20 THE WITNESS: That would represent volumes of
21 hundred pounds of milk. For confidentiality purposes I left
22 the numbers out, but I did read into the record the percentage
23 that the lower line represents as the upper line for each
24 month, from January, '72 to October, '73.

25 So I stuck strictly to percentage figures, Dr. Mathis.

539a

rather than dealing with actual percentage basis for Cabot.

For example, in January, '71, the percent of receipts from producers was 51 percent. Then on the next graph, it has "Percentage of Capacity" over at the left-hand, and each month's percent can be read directly off the graph.

DR. MATHIS: Yes. That was no problem, Mr. Oman. I had difficulty in reading the graph without any numbers.

THE WITNESS: Well, I started, 25, 25, 75, 100 percent on the left, but it didn't work out, because each month varies, so I just read into the record, and if you have a question about any particular month I can give you the percentages again.

But I omitted doing so for each month on the graph.

DR. MATHIS: I wonder if you could tell me, so we could get some handle on what we are looking at here, does the graph start at zero on the bottom?

THE WITNESS: Right.

DR. MATHIS: Can you give us some indication of what the scale might be? I am not trying to get confidential information, Mr. Oman. I am just trying to see what this graph depicts; do you understand what I meant? What does one line or one space equal, approximately.

THE WITNESS: When I would give you our volumes, wouldn't it?

DR. MATHIS: Well, actually rough.

540a

1 THE WITNESS: Let's put it this way. I have been
2 instructed by my employers to maintain confidentiality on our
3 receipts and volumes manufactured. But I will say that accord-
4 ing to my information Cabot is one of the larger cheddar cheese
5 operations in New England.

6 So we are not talking about a lot of milk, but we
7 are talking about a substantial volume of milk.

8 MR. CHERNOFSKY: Your Honor, I think the graph shows
9 exactly what it was meant to. From the graph you can see the
10 relative increases or decreases in receipts from producers on
11 a month-to-month basis for approximately a three-year period.

12 And the same relationship, as far as volume that is
13 manufactured at Cabot plant, Mr. Ogan has read into the record
14 the percentage of volumes manufactured at the plant. As taken
15 from receipts from producers. I think he has depicted clearly
16 what he wants to, as he and his employer have determined the
17 volumes are confidential and I think any further questions
18 along this line would be fruitless.

19 And it would be taking what I consider valuable
20 time.

21 THE WITNESS: I am not trying to be --

22 JUDGE McALPIN: Just a moment. I think the objec-
23 tions are reasonable. These are charts which, according to the
24 text, as I look at it, are showing relative volumes by percent,
25 to indicate that when one thing is high something else is low,

541a

and so forth.

I doubt whether any of you gentlemen in writing your briefs are going to talk about how many pounds that represents. It is the general information being put into evidence for consideration that is involved here, and I don't think it involves how many pounds it is.

I am going to sustain the objections for what they are worth as they stand, plus whatever corrections have been made. Exhibits X-28 through 31 --

MR. HAMMERMAN: May I be heard on that first?

JUDGE McALPIN: No, sir. The exhibits are now being received in evidence. You may question them when you get to cross-examination.

(The items previously marked for identification as Exhibits X-28, X-29, X-30 and X-31 were admitted into evidence).

MR. HAMMERMAN: I have a clarifying question.

JUDGE McALPIN: You may ask that on cross-examination. They are now received in evidence, gentlemen. Do you have anything further?

MR. CHERNOFSKY: No, Your Honor.

JUDGE McALPIN: All right, sir. Cross-examination, Mr. Hammerman?

542a

CROSS-EXAMINATION

BY MR. HAMMERMAN:

Q On Exhibit 29, Mr. Oman, can you tell me for what period the figures on there were computed?

MR. CHERNOFSKY: Your Honor, for the fourth time we have entered that into the record. It was September, 1973.

BY MR. HAMMERMAN:

Q And your yield factors, are they also for September?

A That's right. Actual yield.

Q In the discussion of variables, and from the use of those variables, spreading it over the manufactured milk, did you spread those variables on a milk pound basis proportionately? In other words, how did you allocate the variables that went to cottage cheese?

A This is on a total manufactured -- well, variable costs were taken as one figure for the entire plant, and then applied to making cheddar cheese. In other words, it was applied evenly across cottage cheese, cheddar cheese and butter.

Q And packaging costs are included in those variables; is that correct?

A That is correct.

Q So your figure for cottage cheese, for example, doesn't indicate the actual cost of cottage cheese manufacture. It really bears a pro rata share of the variable cost, is that correct?

543a

1 A That would be somewhat correct. If what you are
2 saying is packaging for costs for cottage cheese were higher
3 than, say, for a pound of cheddar cheese; it does not show
4 that here.

5 Q Your margin, then, wouldn't show the actual margin
6 on cottage cheese; is that correct?

7 A To the extent that the packaging costs or any other
8 costs varied from the average of the plant in a month, cor-
9 rect.

10 Q Can you tell us the test of the milk used to obtain
11 those yields?

12 A Cottage cheese was skim milk. Cheddar cheese was
13 whole milk, approximately three six, give or take a couple of
14 pounds.

15 Q Also, you show a loss of 47.7 cents on butter. If
16 Proposal No. 6 were adopted, you would still have that same
17 loss; is that correct?

18 A Yes. It would have, perhaps, a slightly higher
19 loss, but it would be considerably less than a Proposal No.
20 1, 2, 3, 4, 5, 10 or 11 if it were adopted.

21 Q And because of marketability that you discuss in
22 your statement, it would mean that you would sell less cheddar
23 cheese and cottage cheese, you would then have to put more
24 milk into butter; would you not?

25 A Perhaps.

544a

Q That, of course, moneywise, would increase the losses in the manufacture of butter; would it not?

A To the extent that we are losing money on butter, and if you put more milk into butter and still you lose money.

MR. HAMMERMAN: That's all I have. Thank you.

JUDGE McALPIN: Further questions? Mr. Cochran.

CROSS-EXAMINATION

BY MR. COCHRAN:

Q Mr. Oman, I believe you testified on behalf of the Green Mountain Cooperative Federation; is that correct?

A Correct.

Q All of your testimony, in essence, is related to the experience of the Cabot plant; is that correct?

A Yes, my direct is limited specifically to Cabot.

Q Could you tell us, please, sir, the sources of the incoming milk that comes into the Cabot plant? Is that only--- well, Cabot is a cooperative; is that correct?

A That is correct.

Q Does Cabot represent individual producers whose milk is marketed under Federal Order?

A You mean that are not members of Cabot?

Q No, sir. Is Cabot a marketing association, as well as a manufacturing association?

A That is correct.

Q Does all of the milk produced by the members of the

545a

1 Cabot Cooperative come in, is received at this Cabot plant?

2 A No. We have three plants, one plant in two reload
3 stations. Some of the milk is brought into a reload station.
4 It was in St. Johns Dairy or Bradford, but they have closed up.
5 So it does not all come directly into this Cabot plant.

6 Q The milk that is leaving goes to fluid milk plants
7 in the area?

8 A Some of it, yes. Some of it is also -- if it doesn't
9 have an outlet from there, it would be during periods of
10 peak production.

11 Q Does the Cabot plant take in the milk other than
12 that produced by its own members?

13 A Not from producers. They receive milk from other
14 dealers, balance for other dealers. They receive milk and
15 cream from three local dealers, Cumberland Farms, Mountain
16 View, at Stockwell. Regularly the cream from Yankee Milk, as
17 producer milk, no.

18 Q Cabot bargains with these other entities for the
19 price that Cabot pays for that milk. In other words, the milk
20 that we are talking about is producer milk, associated with
21 some other handler than Cabot?

22 A Right. Sometimes it is negotiated and sometimes I
23 suppose it is on a basis -- on a basis of "We'll sell you
24 cream at this price. Do you want it?"

25 Q I understand that this milk that you buy is not

546a

1 limited to cream. You also buy some whole milk?

2 A Yes. Some whole milk. But it is more as a balancing
3 function than it is purchasing for our purposes. In other words
4 it is sold to us. We don't go out and solicit it and buy it.

5 Q After you obtain this milk from some other pool
6 plant regulated by the Order, does that physically move into
7 your Cabot plant and physically move out again into some other
8 pool plant?

9 A No. It is run through our plant.

10 Q Apparently you do not move any bulk milk out of your
11 Cabot plant to pool plants regulated by the Order?

12 A No, that's not correct. We do move considerable
13 volumes of bulk milk to pool handlers. Are you saying that
14 the milk that we buy from other handlers would also, then, end
15 up in some of the shipments to pool handlers?

16 Q That was generally my question, yes.

17 A I don't think I can answer that, Mr. Cochran, with
18 any degree of accuracy. The milk that comes in from other
19 handlers is weekend balancing and such as this. To the extent
20 of what of it moves out, I don't know, that same milk.

21 Q Well, does this organization buy bulk milk and then
22 market it to pool plant handlers without that milk coming
23 into your Cabot plant?

24 A Not to my knowledge ---

25 MR. CHERNOFSKY: Your Honor, I believe he just

547a

1 stated that he can't answer that with any degree of accuracy.

2 MR. COCHRAN: I don't think my examination of this
3 witness should be interfered with by these objections. I am
4 trying to get an answer clarified on something.

5 MR. CHERNOFSKY: Mr. Cochran, I thought that question
6 was repetitive.

7 MR. COCHRAN: I don't think it was.

8 JUDGE McALPIN: Gentlemen, please. Do not address
9 remarks directly to each other. I am going to overrule the
10 objection so long as Mr. Cochran, as I believe he has been
11 doing, stays within the realm of our issues here and so long as
12 the witness can and does answer.

13 I don't say what answer he has to give because I
14 can't tell him.

15 THE WITNESS: In answer to that question I would
16 only say that to my knowledge ---

17 BY MR. COCHRAN:

18 Q I believe some of your cost figures relate to the
19 costs in handling fluid milk; do they not?

20 A Correct.

21 Q What is that milk, and what is done with it?

22 A Basically, on fluid milk that you are talking about
23 it is picked up, brought to the relayed stations and shipped
24 to fluid handlers. My cost figures show, on a monthly basis
25 basis, total operating costs. I have broken them down into

1 labor and fixed costs on a monthly basis and these labor and
2 fixed costs are applied to all milk handled, bulk and manu-
3 factured.

4 Q In other words, your operating costs involve both
5 the costs concerned with the operations at the receiving sta-
6 tion and at the manufacturing facility?

7 A No. The costs I have relate strictly to Cabot
8 plant and the bills that they actually paid.

9 Q I am not trying to argue with you at all, but I
10 understood you told me that the costs involved with the whole
11 milk, bulk milk, involves the milk that was handled through
12 the receiving station.

13 A I am trying to separate it out from where I got my
14 cost figures from. To the extent that milk is brought into a
15 receiving station and then shipped to the Cabot plant, there
16 would be some transportation costs there that would show up.

17 I think you are correct. I would have to say that
18 these costs represent the total operation of Cabot, including
19 the receiving facility.

20 Q Did you make the calculations involved in these
21 tabulations?

22 A I took the figures that their office manager has
23 on a month-by-month basis and broke them down. I did not
24 go back and check each check and bill that was paid.

25 Q Am I correct in my interpretations of Exhibit 29

549a

1 that in the month of September, 1973, Cabot sold its cheddar
2 cheese product at a price of 91.2 cents per pound?

3 A That's correct. As I stated in the short season,
4 short milk supplies, and shorter production of cheddar cheese
5 we can often get five, eight, ten pound premium. But if you
6 are going into the flush months, when you are manufacturing
7 sometimes five to six times the volume of cheddar cheese, you
8 are lucky if you get an average market price for your product.

9 Q Does Exhibit 29 also show that September, 1973, you
10 sold your butter product at a price of 98.6 cents per pound?

11 A That is the value of the fat given the market value
12 of the butter that goes into the churn. You multiply the
13 market price of the butter by one to five, and you divide it
14 with the fat, per pound of fat in the butter.

15 Q But your cheese price is on a product basis?

16 A Right.

17 Q Are you quite sure that the 98.6 cents is on a
18 butterfat basis and not on the basis of a butter product?

19 A Right. I wish we could get 98 cents per pound of
20 butter.

21 Q What does that 98.6 equate to in butter prices?

22 A In September it would have been about 78 cents a
23 pound.

24 Q What factor did you use there.

25 A One to five.

550a

1 Q Do you manufacture any nonfat milk powders?

2 A Not at Cabot. At St. Albans we do.

3 Q You say we do. Do you mean the Green Mountain Fed-
4 eration?

5 A No. I represent three cooperative federations, one
6 of which is St. Albans and one of which is Cabot. St. Albans
7 manufactures some powder, but my testimony has been limited
8 before we get any further on that to the operations of Cabot.

9 Q Then Cabot has one portion of your representation,
10 has no market in nonfat milk powder; they just don't make it.

11 A That is correct.

12 Q Apparently the fat and the skim that you do manufac-
13 ture goes into either cheddar cheese, cottage cheese or butter;
14 is that correct?

15 A They make some sour cream and dips.

16 Q Over what area, geographically, is the cheddar
17 cheese that is manufactured at that plant marketed or shipped?

18 A I don't think I could answer that, Mr. Cochran,
19 at this time. I just don't really know.

20 Q Do you know into what areas the butter product is
21 marketed?

22 A No.

23 Q Into what areas the cottage cheese is marketed?

24 A No.

25 Q Do you know the price at which the other cooperative

1 you referred to, do you know the price at which it markets
2 its nonfat milk powder product?

3 A Specifically, no. But it is right at and around
4 what works out to be the average grade powder price for the
5 month. It is pro-rated for the Grade A powder.

6 Q You don't know, but --

7 A I don't know exactly at any given time. But I know
8 it is priced right at the powder market at any given time.

9 Q I believe you stated you did not know the area into
10 which that was marketed?

11 A Right. But you asked me the price, didn't you, in
12 the last question?

13 Q Yes, sir. That's right.

14 MR. COCHRAN: That's all I have, I think.

15 JUDGE McALPIN: Further questions? Dr. Mathis.

16 CROSS-EXAMINATION

17 BY DR. MATHIS:

18 Q Mr. Oman, in Exhibit number 30, X-30, you are attempt-
19 ing to show, are you not, the relative proportions of milk
20 used for manufacturing purposes in relation to the total
21 receipts from producers; is that correct?

22 A Correct.

23 Q I am wondering if you can give us some indication
24 of the percent or portion of the manufacturing milk used at
25 Cabot that is what might be considered balancing as opposed to

552a

1 their regular manufacturing operation associated with that
2 company?

3 A I don't think you can separate their balancing
4 functions from the regular manufacturing. The manufacturing
5 functions are balancing. The plant was built in 1970-71,
6 specifically, for balancing their producers' supplies in a
7 period of quite heavy production.

8 Since then, their production has been going down,
9 but it was built specifically to balance their producers'
10 supplies, to the extent the market needs. So I don't think
11 I could separate them.

12 Q Did you indicate earlier, in response to a question
13 of Mr. Cochran, that Cabot manufactured other products, other
14 than cheddar cheese? I believe you indicated --

15 A Sour cream and dips, a small amount.

16 Q Do you consider that manufacturing to be a balancing
17 function, or is that an ongoing business function of Cabot?

18 A Well, it is all part of taking surplus supplies and
19 balancing the market, and manufacturing various products. As
20 you start manufacturing some products, you develop outlets and
21 you supply these outlets to the extent that you can.

22 Q Don't the outlets --

23 A The purpose is not to build up a Class II trade, in
24 these products. Milk we have left over, they process it into
25 the products where they get the most return at a given time.

553a

1 They have built up some local trade in sour cream and dips.

2 Q Along that particular line, don't these markets that
3 we are talking about now with respect to sour cream and dips,
4 aren't these markets pretty steady, and don't they require a
5 fairly steady volume of milk being used to manufacture these
6 products on a regular basis, rather than on a seasonal basis?

7 A To an extent, I suppose, but you can't supply them
8 with more milk than you have, so our outlets are not built up
9 such that they exceed what we have here. They all fall below
10 the seasonality lines.

11 Therefore, in any given product, you may not have
12 seasonality. You may always have enough milk -- let's say
13 the lowest production of manufactured milk was 25 percent. To
14 the extent of any of these regular outlets that you have, you--
15 it had better be less than 25 percent of your receipts or you
16 are going to have to buy outside sources.

17 So these outlets are not built up with the intent
18 of selling as much as possible. Seasonality affects the total
19 operation of the plant.

20 Q Is the significance of the 25 percent figure element
21 that Cabot has approximately 25 percent of its milk that it
22 receives that it does not have a fluid milk market for in the
23 shortest month of the year, and therefore has to maintain a
24 manufacturing plant such as this in order to assure its members
25 a continued market for its milk?

554a

1 A No. I picked the lowest month in answer to the
2 previous question, which was September of 1971. That was the
3 lowest month, the lowest percentage that they manufactured.
4 Twenty-five percent does not represent in any way the volume
5 of milk that this plant is needed for.

6 It ranges all the way from 79 percent to 75 percent,
7 65 percent of producer receipts. Twenty-five percent is in
8 no way representative.

9 Q I understand that, but --

10 A That was one month.

11 Q In the best month of the year that Cabot has, it
12 still has 25 percent of its milk that has no fluid market.
13 That's all I am suggesting, and I was wondering if it was
14 true.

15 A That was in '71. In the most recent past fall,
16 August, September and October, it was 39 percent, 40 percent,
17 and 39 percent, respectively. So even in the shortest produc-
18 tion months, when supplies are shortest and sales are highest,
19 we still manufactured 39 and 40 percent of producer receipts
20 in the short season.

21 Q I will turn to another subject. With respect to
22 this milk, you indicated that you received from other handlers.
23 I think you indicated you received some milk from Cumberland
24 Farms and from other handlers on a seasonal basis for balancing
25 purposes.

555a

1 I don't mean to mischaracterize, I think you
2 indicated that on occasion it was cream you received rather
3 than straight milk; is that correct?

4 A Right.

5 Q Could you characterize that function of Cabot as to
6 how important that particular type of receipt is in terms of
7 overall operation?

8 A I have no knowledge as to percentage.

9 Q Then you wouldn't know, in simple terms, whether it
10 was a minor part, or significant part or a major part of its
11 operations; would you characterize it that way for us?

12 A I wouldn't know whether it was minor or major, but
13 I know a lot of it was regular. I think we even had some of
14 Eastern's milk coming through there.

15 Q When you received this milk from a handler, does
16 Cabot purchase this at the Class price under the Order or
17 for more or for less than that level? This would be Class II.

18 A I would have to say that I don't know exactly.

19 Q Is there a handling charge assessed on volumes of
20 milk that balances for Cumberland or Eastern milk or handlers
21 other than for its own handlers?

22 A I don't know exactly, but I would presume that there
23 is some.

24 Q I believe in a previous question you indicated that
25 in respect to your losses on butter, that if Proposal 6 went

1 into effect, your losses could be greater. I am wondering
2 whether your answer would be the same if I reminded you that
3 within the context of Proposal No. 6 there is a special price
4 for butter and powder which would, in effect, price butter
5 substan' ally below the other manufacturing milk products?

6 A I stand corrected. The losses on butter would be
7 about the same. It would be considerably less than Proposals
8 1, 2, 3, 4, 5, 10 and 11. But you are correct. We would

9 all be on the butter-powder formula, and thus, perhaps,
10 able to market the butter that we are in a sense required to
11 make at at least a break-even point.

12 DR. MATHIS: Thank you. That's all I have.

13 JUDGE McALPIN: Mr. Miller?

14 CROSS-EXAMINATION

15 BY MR. MILLER:

16 Q Would you please explain what you meant in the
17 answer to the last question about possibly being able to market
18 the butter at a break-even point?

19 A If we had adequate make allowances we could possibly
20 break even. But at the present time even with make allowances
21 as they are we are not able to break even.

22 Q One further question. If Cabot were forced to make
23 more butter because it didn't dispose of its milk that had to
24 be manufactured into the usual other products, other than
25 butter, what would Cabot do with the additional skim milk that

557a

1 it would have on its hands in that situation?

2 MR. CHERNOFSKY: Your Honor, at this point I would
3 like to advise the witness that Mr. Miller has asked him to
4 make an assumption and the witness has two options. He can
5 either reject the assumption and not answer the question, or
6 he can accept the assumption as an assumption and answer the
7 question.

8 JUDGE McALPIN: Counsel has a right to instruct his
9 witness, and he has so instructed him.

10 MR. MICALE: Your Honor, if I may I would like to
11 interpose a further objection. I think Mr. Miller again is
12 placing what amounts to direct testimony into the record. The
13 witness has presented his testimony and I believe Mr. Miller
14 ought to confine his questions to cross-examination.

15 JUDGE McALPIN: Counsel has instructed the witness.
16 I will let him do what he is going to do in light of such
17 instruction.

18 THE WITNESS: Was your question that if we could
19 make no more cheddar cheese or cottage cheese, etcetera, and
20 were forced to put the remaining volume of milk into butter,
21 what would we do with the skim?

22 MR. MILLER: Correct.

23 THE WITNESS: I don't know.

24 MR. MILLER: That's all.

25 JUDGE McALPIN: Mr. Hammerman?

558a

CROSS-EXAMINATION

BY MR. HAMMERMAN:

Q Mr. Oman, in reply to my previous question with respect to the test of the milk used in September, 1973, I think you answered that it was probably about 3.6 percent; is that correct?

A Correct. Three six, three six four or something like that.

Q I am wondering if the test wasn't actually higher. I have made a computation. I have taken your butter yield of 4.612 and would you say I could get butter which has a minimum fat standard of 80 percent, you would have to put in about 82 percent fat; would that be reasonable?

A That may be, but I don't see first of all the relevancy and secondly that still doesn't say anything about the average test of milk in the plant.

Q Well, if I take your yield of 4.612 and assuming that to make a pound of butter I need 82 hundredths of a pound of fat. I find that 100 pounds of milk that I use would have to test about 3.78 percent, which is considerably higher than the 3.6 figure you gave me.

A You are assuming we operate with 100 pounds of milk in the plant. They don't put 3.5 milk into the butter churn. They take the cream from the milk. They make cottage cheese out of it, balance the whole operation, and send so much milk

1 into the butter churn. I don't believe that you can really
2 get from what I have here back to the average test of the milk
3 in the plant.

4 Q In view of that you really couldn't determine your
5 gross margins, because you didn't know the average test for the
6 milk in the plant, or the average test of the milk used for
7 butter. You wouldn't really know the cost of that milk; is
8 that correct?

9 A No, sir. I don't believe so, because the net cost
10 in Column 1 is Class II price adjusted for plant location and
11 butterfat content, less market administrator assessment. So
12 the net cost is an adjusted one in Column 1 for fat content.

13 Therefore, the price for the fat going into the
14 churn in Column 1 is the price of 100 pounds of milk at a
15 certain test, less the value of the skim.

16 Q That certain test would be the average test of the
17 plant; is that correct?

18 A I believe that would be correct. I'm not sure.

19 Q If you used separated cream, which wound up in a
20 churn, milk of a high test, it wouldn't be reflected in your
21 cost, would it?

22 A I am not sure I understood that.

23 Q If you used 3.8 percent milk for separating and the
24 resulting cream went into the churn, the cost of the 3.8 per-
25 cent milk would not be reflected in the cost figure which

560a

1 you have in Column 1; is that correct?

2 A It would be reflected in the total cost of the
3 plant. But perhaps not on a product basis.

4 Q The same would be true with all your other figures?

5 A These prices that I showed here are based on a 3.6.
6 I think the butter was a 3.64 and the cottage cheese based
7 slightly under 3.6. These figures are from given fat contents
8 of milk.

9 Q And your cottage cheese here, the figure 21.81 per-
10 cent, does that include the cream used for dressing, or is
11 that just the yield on dry curd?

12 A That includes the cream and the cost in Column 1
13 includes the cost of the cream.

14 Q And the yield on cheddar cheese? I realize you have
15 answered me previously. That's the yield you would pay in
16 September. But can you enlighten us as to what your average
17 yield is throughout your cheddar cheese making period?

18 A I don't have those figures with me.

19 Q Would you say it is somewhat less than 10.10?

20 A Yes. I think this is a particularly good yield month.

21 MR. HAMMERMAN: That's all. Thank you.

22 JUDGE McALPIN: Further questions?

23 Hearing none, thank you Mr. Quinn.

24 (The witness was excused).

25 JUDGE McALPIN: Let's take a ten-minute recess.

Tape #2

1 (Whereupon, a short recess was taken).

2 JUDGE McALPIN: Gentlemen, we are back on the record.

3 Mr. Chernofsky, do you have another witness, sir?

4 MR. CHERNOFSKY: Yes, sir. Mr. Arms, please.

5 Whereupon,

6 DAVID C. ARMS

7 having been duly sworn by the Chief Administrative Law Judge
8 was called as a witness herein and was examined and testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MR. CHERNOFSKY:

12 Q Mr. Arms, would you state your full name and by whom
13 you are employed and in what capacity for the record, please?

14 A My name is David C. Arms. I am employed as General
15 Manager and economist for the Richmond Cooperative Association,
16 Richmond, Vermont.

17 Q Mr. Arms, do you have a statement you would like to
18 make today which I understand is in support, essentially, of
19 Proposal No. 6, with a slight modification; is that correct?

20 A That is correct.

21 Q Would you please proceed?

22 A My name is David C. Arms. I am General Manager and
23 economist for Richmond Cooperative Association, Richmond,
24 Vermont. The Richmond Cooperative is a handler with pool
25 milk under the Boston Regional Order No. 1, and in the

562a

1 Connecticut Order No. 15. The association operates a cheese
2 manufacturing plant at Richmond, Vermont, at which we special-
3 ize in the making of Italian mozzarella cheese. The cooperative
4 association also operates a pool distributing plant in Webster,
5 Massachusetts, and a receiving station located at Olden,
6 Massachusetts.

7 The Richmond Cooperative is among the proponents of
8 Proposal No. 6 in the Hearing Notice, and we do support Pro-
9 posal No. 6. However, a careful review of the Proposal No. 6,
10 subsequent to its submission by the New York-New England Co-
11 ordinating Committee, has since caused the cooperative to
12 propose a modification at this hearing.

13 We hereby propose Proposal No. 6 be modified to place
14 a ceiling or a limit on the Class II price prior to seasonal
15 adjustment, which ceiling would not exceed the basic formula
16 price as defined in each of the Orders.

17 The reason for our suggested modification is that
18 we find final Class II prices arrived at by averaging the
19 Minnesota-Wisconsin butter-powder formula prices could be too
20 high at certain times when the butter-powder formula price is
21 greater than the Minnesota-Wisconsin price.

22 I point out during 1973 in nine months of the year
23 the butter-powder price was higher than the Minnesota-Wisconsin.
24 This situation could cause very serious operating difficulties
25 for the Richmond Cooperative and others, especially in those

563a

1 months of the year when the plus Class II seasonal applies.

2 For example, had Proposal No. 6 been in effect in
3 August and September of 1973 the resulting Class II prices
4 would have been 28 cents and 23 cents per hundredweight higher
5 respectively than the Minnesota-Wisconsin prices applicable
6 in the same months.

7 At such higher prices in the northeast, we could not
8 compete effectively in the cheese market without taking sub-
9 stantial losses. We fully recognize that a pricing disparity
10 presently exists in the Class II pricing formula, as between
11 the Minnesota-Wisconsin Price Series and the butter-powder
12 snubber that is in need of correcting.

13 We strongly urge, however, that the Secretary of
14 Agriculture first consider taking immediate remedial action
15 under the dairy price support program by establishing more
16 appropriate CCC purchase prices for butter and nonfat dry milk
17 to close the gap between cheese and butter-powder milk values.

18 The Richmond Cooperative further opposes emergency
19 action leading to an omission of the recommended decision or
20 a suspension action on the basis of this hearing record. We
21 feel that the possible impact on producers, order amendments, or
22 a suspension action is far too great.

23 We want an opportunity to present views, data,
24 arguments beforehand on the recommended decision. That completes
25 my statement.

564a

1 MR. CHERNOFSKY: Your Honor, Mr. Arms is available
2 for cross-examination.

3 JUDGE McALPIN: All right, sir. Cross-examination?
4 Mr. Cochran.

CROSS-EXAMINATION

BY MR. COCHRAN:

7 Q Would you tell us, please, the price at which you
8 are currently marketing Italian cheese, the price per pound?

9 A Those prices vary and this is confidential informa-
10 tion. I would only respond that the price is related both to
11 Class II price level and the quotation on the green -- the
12 Wisconsin-Green Bay exchange for 40-pound blocks of cheddar.

13 Q Could you tell me in what areas geographically this
14 cheese product is marketed?

15 A Our cheese is marketed primarily in the New York and
16 Boston areas. Some of it fans out to Pennsylvania. From
17 there it is marketed by others and probably covers a wide area
18 in the Northeast, east of the Mississippi, for that matter.

19 Q Does the cheese product that you manufacture compete
20 with similar products manufactured in the midwest manufacturing
21 area?

22 A Yes, it does.

23 Q Do those products compete with the same type products
24 manufactured in the Iowa area, the state of Iowa?

25 A I am not certain with respect to the state of Iowa.

565a

There is competition from Wisconsin.

Q Is the cheese manufacturing the only manufacturing operation operated by your company?

A We are a cheese manufacturer. We do not make butter-- excuse me, we do have a churn and we do churn butter, but it is only whey cream butter.

Q Then if I understand your modification correctly for the manufacturing facility, you would use the average of the butter-powder value and the Minnesota-Wisconsin Series value, except that if that average were higher than the Minnesota-Wisconsin Series value, the Minnesota-Wisconsin Series value would obtain.

A That is correct, except for one point, Mr. Cochran. We do support the use of the butter-powder snubber for milk that is going into butter-powder which is a part of Proposal No. 6, when the butter-powder formula price is below the Minnesota-Wisconsin.

MR. COCHRAN: That's all.

JUDGE McALPIN: Further questions? Mr. Morris.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Mr. Arms, I did understand you correctly at the conclusion of your statement to indicate that you believe this hearing should result in a recommended decision with the usual opportunity for parties to brief it?

566a

1 A That is correct.

2 Q Do I infer from this that you do not feel, in accord-
3 ance with some of the witnesses, that emergency requires imme-
4 diate implementation of any changes that may be made, as a
5 result of this hearing.

6 MR. CHERNOFSKY: May I ask for a clarification on
7 that. When you say other witnesses, do you mean other witnesses
8 who testified on behalf of New York-New England Cooperative
9 Committee?

10 MR. MORRIS: No, I was speaking specifically of
11 Mr. Mason.

12 THE WITNESS: The principal statement for the New
13 York-New England Committee was given by Dr. Stewart Johnson,
14 and I believe he testified that he opposed the omission of
15 the recommended decision. As to the emergency nature of this
16 hearing, Richmond Cooperative takes the position that we do
17 have a problem, the gap between the butter-powder price and
18 the Minnesota-Wisconsin Price Series.

19 But we do feel that this, in large measure, was
20 brought about by action on the part of the government, both
21 in tilting the price support, the announced purchase price of
22 butter-powder and cheese, by allowing imports and by many
23 other factors.

24 We do feel this could be resolved in a large measure
25 outside the scope of this hearing by an action on the part

567a

1 of the Secretary, which could be taken tomorrow.

2 By MR. MORRIS:

3 Q To clarify my question with respect to the possible
4 results of this hearing, would your opinion be in accord with
5 Dr. Johnson who made the principal statement?

6 A Yes. I believe in my statement we have opposed the
7 omission of a recommended decision for the reasons we submitted.

8 MR. MORRIS: Thank you.

9 JUDGE McALPIN: Further questions? Hearing none,
10 thank you, Mr. Arms.

11 (The witness was excused)

12 MR. CHERNOFSKY: Your Honor, on behalf of the New
13 York-New England Cooperative Dairy Coordinating Committee we
14 thank you.

15 JUDGE McALPIN: Thank you, Mr. Chernofsky. Are there
16 any statements now in support of Proposals 6 and 7? Hearing
17 none, we are ready now for statements in opposition or modifi-
18 cation of six and seven and in some cases we will take them
19 also with reference to one, two, three, four, five, ten and
20 eleven.

21 Mr. Creamer, I believe you have someone from Lehigh
22 Valley?

23 Whereupon,

24 JOSEPH COTTEE

25 having been duly sworn by the Chief Administrative Law Judge

1 was called as a witness herein and was examined and testified
2 as follows:

3 DIRECT EXAMINATION

4 BY MR. CREAMER:

5 Q Would you state your name, please?

6 A My name is Joseph W. Cotter.

7 Q Are you with Lehigh Valley Cooperative Farms?

8 A I am.

9 Q In what position?

10 A Procurement Director.

11 Q Would you tell us a little bit about your background,
12 educationally, and by experience?

13 A Yes. I have a BS degree from Mount St. Mary's Col-
14 lege in Emmitsburg, Maryland. I did two years graduate work
15 at Georgetown. I got my Master's Degree at the University of
16 Maryland, and I have been in the dairy business since 1935.

17 Q Do you have a statement, Mr. Cotter?

18 A I do.

19 Q Would you proceed with your statement?

20 A U.S. Department of Agriculture, Agricultural Market-
21 ing Service, Milk in the Boston Regional and Certain Other
22 Marketing Areas. Docket Nos. AO-14-A53, etcetera. Public
23 Hearing to amend Class II and Class III price provisions of
24 eight marketing orders.

25 Statement presented on behalf of Lehigh Valley

569a

1 Cooperative Farmers, 1000-1160 North Seventh Street, Allentown,
2 Pennsylvania, 18001, February 20, 1974.

3 My name is Joseph Cotter, and I reside at 9030
4 Autoville Drive, College Park, Maryland, 20740. I am appear-
5 ing on behalf of Lehigh Valley Cooperative Farmers of Allentown,
6 Pennsylvania.

7 Our organization is one of approximately 1,000
8 dairy farmers, 675 of whom are producers under Order 4, regulat-
9 ing the handling of milk in the Mid-Atlantic Marketing Area.
10 As dairy farmers, the Lehigh Valley Cooperative has over ten
11 and one half million dollars invested in processing reserve
12 supplies for the Mid-Atlantic market.

13 A substantial amount of this investment has been
14 made in facilities for the manufacture of cheese in expectation
15 of advantages for membership which would not have been anti-
16 cipated in the absence of such investment and enterprise.

17 We do not now look with favor, therefore, on pro-
18 posals which would increase the returns of producers who have
19 not contributed capital and management to the handling of
20 reserve milk supplies by reducing the returns of those who
21 have.

22 We have made inquiries of equipment specialists and
23 have ascertained that investment in cheese capacity has
24 been greatest in Wisconsin in terms of total dollar volumes
25 of expenditures. However, the greatest increase in cheese

570a

1 facilities percentage-wise over the past two years has been in
2 the North and South Mid-Atlantic Area. Expenditures in plant
3 and equipment procured for cheese manufacture indicate the
4 Lehigh dollar investment for this purpose to rank among the
5 top two percent of all capital expenditures so made.

6 It is now being alleged that milk entering manufactur-
7 ing use under the butter-powder formula is underpriced even
8 though butter-powder plants cannot pay such a price for the
9 milk and pay their processing cost.

10 The basis for this allegation lies in the apparent
11 willingness of Wisconsin and Minnesota manufacturing plants,
12 under procurement pressure from fluid markets, to pay in
13 January as much as \$1.18 per hundredweight more than the
14 butter powder formula for milk entering cheese use.

15 Yet by employment of a gross value for butter-powder
16 based on a Chicago 92 score butter price, times 4.27, plus a
17 Chicago area spray powder price, times 8.3, the margin available
18 for processing butter-powder would, after payment for milk at
19 the butter-powder formula, plus \$1.18, amount to a negative re-
20 turn of 70 cents per hundredweight of milk.

21 Since September, gross margins available from butter
22 and powder, after calculating a milk cost equal to that paid
23 by Minnesota-Wisconsin manufacturing plants, would have left
24 the processor paying for the privilege of manufacturing butter
25 and powder.

1 As a result, butter-powder plants have been shutting
2 down, and milk that once entered these plants has been forced
3 to locate new outlets.

4 It is obvious from the foregoing that it is the
5 gross value of cheese, and not the value of milk, per se, which
6 is responsible for the current urgent desire of bargaining
7 groups to share in returns from capital investments of others.

8 With the passage of time, and the functioning of price
9 and margins to restore more historically normal relationships,
10 outlets are likely once again to be held entitled to their wage
11 for risk and capital costs.

12 We compare, for instance, gross margins for cheese,
13 Wisconsin primary market 40 pound block cheese price times
14 9.45, plus Chicago 92 score butter price times .3, and gross
15 margins for butter powder, Chicago 92 score butter price times
16 4.27, plus Chicago area spray powder price times 8.3, at the
17 Minnesota-Wisconsin manufacturing grade milk price, averaged
18 over the past 13 years.

19 MR. CREAMER: Your Honor, could we have what appears
20 at the top of Page 3 put into the record as if Mr. Cotton
21 had read them?

22 JUDGE HOLPIN: The reporter is instructed to re-
23 produce the tabulation at the top of Page 3 in the presentation
24 by Mr. Cotton, as if read into the record.

25 MR. CREAMER: Thank you, Your Honor.

Dollars per Hundredweight

Year	Ave. Cheese Margin	Ave. B.P. Margin
1961	.48	.50
1962	.49	.62
1963	.56	.55
1964	.57	.52
1965	.54	.48
1966	.63	.38
1967	.48	.47
1968	.53	.50
1969	.69	.38
1970	.74	.45
1971	.73	.62
1972	.73	.54
1973	.75	.49

A number of proposals being considered at this hearing concern the use of the Minnesota-Wisconsin Manufacturing Grade Milk Price to set the price of Class II milk in eastern and north central milk markets.

The Minnesota-Wisconsin price, the so-called M-W series, is already in use by the Department of Agriculture to establish the price of milk in fluid markets throughout the United States.

It is this series which was responsible in 1973 for increasing fluid milk prices by over two dollars and a half

573a

1 a hundredweight, the greatest increase in history over so
2 short a period of time.

3 The Secretary of Agriculture has already announced
4 his decision to make use of this series to establish Class II
5 surplus milk prices in many midwestern markets for fluid
6 milk.

7 The Minnesota-Wisconsin Manufacturing Grade Milk
8 Price has been presumed to represent basic values of milk in
9 this country, free of fluid milk market and classified price
10 plan influences, and determined wholly in the competitive manu-
11 facturing milk market.

12 The Department of Agriculture describes the basic data
13 as drawn from reports of about 233 plants in Wisconsin and
14 about 120 plants in Minnesota that purchase approximately 50
15 percent of all manufacturing grade milk sold by Wisconsin and
16 Minnesota farmers.

17 The material was stated in July, 1973, to "relate
18 only to manufacturing grade milk purchased from farmers"
19 not including any Grade A milk diverted to manufacturing use.
20 For some months reports have been circulating relative to dif-
21 ficulties manufacturing plants have been having retaining pro-
22 ducer patrons.

23 Producers have been reported attracted to the higher
24 priced fluid markets and have been shifting in markets to
25 Grade A status in order to be eligible for shipment of their

574a

1 milk in such markets.

2 The manufacturing plants have sought by various
3 means to associate themselves with fluid market pools in order
4 to satisfy their producers while retaining their milk for manu-
5 facture. At the same time, the Chicago fluid market order has
6 been amended so as to make such plant associations with that
7 Order's pool more difficult.

8 Finding new associations more difficult, the manu-
9 facturing plants have sought to keep their producers by enter-
ing into the marketing of fluid milk and thereby augmenting
11 the income of the graded and ungraded shippers.

12 MR. CREAMER: Mr. Cotter, if I may interrupt you for
13 a minute. The paragraph you just read relates to Minnesota-
14 Wisconsin plants; does it not?

15 THE WITNESS: Yes.

16 MR. CREAMER: Thank you. Please continue.

17 THE WITNESS: Again, according to reports, the so-
18 called Chicago Standby Pool has made funds available to the
19 graded portion of the manufacturing enterprises through pay-
20 ments to them for the exclusive commitment of their Grade A
21 supplies to be shipped, if, as and when directed by the coop-
22 erative sponsors, AMPI, Mid Am, and Dairymen, Inc., of the
23 Standby Pool.

24 According to reports, this has required frequent
25 diversion of graded milk supplies of the manufacturing plants

575a

1 away from the manufacture of cheese, in particular. Remaining
2 short supplies of ungraded milk have continued to be processed
3 into the increasingly higher priced outlets for cheese. Thus,
4 although technically the plant's operations remained segregated
5 by categories, into graded and ungraded sides, the common
6 pocketbook operation of the plants has made possible increases
7 in payments to the ungraded producers.

8 With such increases in payments, the M-W series
9 prices have been increased. This has, in turn, increased
10 fluid milk prices and has also influenced further gains in the
11 price of cheese.

12 Increases in fluid blends have further stimulated
13 the needs of the manufacturing plants to raise returns to the
14 ungraded producers. And so on. It is clear that if these
15 reports could be substantiated, the Department of Agriculture's
16 reliance on the M-W series as a pure and unbiased measure of
17 manufacturing milk values could no longer be supported.

18 In its place would be revealed a price which, within
19 certain limits, was free to feed upon itself. Further, the
20 Department should probe the ability of a manufactured grade
21 price to develop new levels of price for cheese, without cor-
22 responding increases in cheese production.

23 Finally, and more particularly, the weakness in the
24 Minnesota-Wisconsin series in terms of its application in
25 the Eastern Seaboard should be studied. Beginning the second

1 week in February, we had an informal telephone survey made of
2 the influence and effects of fluid milk markets upon manufac-
3 turing grade milk prices. Selection of the largest of the manu-
4 facturing plants in Minnesota and Wisconsin were requested
5 for information.

6 Each of these plant operators advised that they report-
7 ed their operations monthly to make up a part of the Minnesota-
8 Wisconsin series. These plants are all dual type operations
9 in that they handle both Grade A and Grade B milk. The report
10 on the Grade B operation is done separately.

11 The overall financial operation of the plants and
12 the financial records include the purchases and receipts from
13 the Grade A operations and are commingled with the Grade B
14 purchases and receipts.

15 The compositing of financial records determines
16 whether the plant operator is making money or losing money.
17 Some three or four years ago when the price for cheese was
18 depressed, these cheese plant operators joined the Standby
19 Pool, which was tied into the Chicago market.

20 They indicated that they were generally relieved and
21 happy to be able to do this at that time because this gave
22 them the opportunity to sell part and sometimes as much as 50
23 percent of their total receipts of graded milk for fluid pur-
24 poses, which was of help to them in their overall financial
25 problem in operating the plants.

577a

1 However, now that the cheese price is up they still
2 must ship Grade A milk when the Standby Pool calls upon them
3 to do so. The markup for this milk is not now comparable
4 with the margin which could now be made in cheese.

5 The necessity for shipping Grade A milk on call cuts
6 down on the milk available for cheese. They are therefore
7 engaged in efforts to secure more milk for cheese, which is
8 available to them only at premium rates.

9 These premiums are reported as part of the price paid
10 for their supplies of manufacturing grade milk, which naturally
11 raises the M-W series. They report that currently they feel
12 able to afford premium rates for the milk going into cheese
13 because the market price for cheese so far has been able to
14 support the increased cost of milk.

15 The plant operators state generally that they would
16 now much prefer to keep all of their milk for cheese manufac-
17 ture and avoid the intrusion of the fluid milk market demands
18 into their operations for the following reasons.

19 One. They fear the spiralling effects of their
20 prices for milk and in the cheese market upon the present un-
21 precedentedly favorable public response to cheese.

22 Two. They fear also the consequences of a cheese
23 import policy upon the stability of their own industry.

24 Three. They are apprehensive lest the relatively
25 uninhibited price and control policies of fluid milk market

1 interests of producer groups result in reflecting unfavorably
2 upon the entire dairy industry. Whatever the merits or demerits
3 of this casual effort to gain information and insight into the
4 influence of fluid market groups upon manufacturing grade milk
5 prices, it is clear that government pretensions of a price-making
6 capacity upon the part of the manufacturing milk industry that
7 is unique and sui generis are intellectually invalid, to put
8 the matter mildly.

9 In this further respect, and with particular refer-
10 ence to these public proceedings, we must express some ques-
11 tion relative to the role the U.S. Department of Agriculture
12 conceives itself to have as a trustee of the public interest
13 in administering the price making apparatus under the Agricul-
14 tural Marketing Act.

15 On the assumption that the Department has and feels
16 such a public responsibility, the Department, as an informa-
17 tion gathering and disseminating agency, has been requested
18 to comment and respond to questions concerning the propriety of
19 its own assertions as to the M-W series.

20 Such questions may lead ultimately, of course, to
21 the question of the Department's own continued dependence and
22 heavy reliance on the M-W series as a vehicle for determina-
23 tion of Class I and Class II prices in virtually all major
24 fluid milk markets of the United States.

25 Any continued insistence upon the purity and

579a

1 independence of the M-W series as a measurement of manufacturing
2 ing milk values does little to support it if our survey is
3 valid.

4 The Department is engaged in matters of more moment
5 than the settlement of a private case or controversy, and must
6 in good conscience participate actively in the development of
7 information shedding light on the validity of the M-W series.

8 The Department apparently has previously concluded
9 that the nation must rely on the M-W series to establish
10 Class I and Class II prices for fluid milk. The facts are that
11 the Department is and has been involved in rule-making on
12 matters of transcendent public importance to the economic and
13 physical health of this country and of its dairy industry.

14 Of immediate smaller concern is the extent, if any,
15 to which fluid milk producers and others who have invested
16 in facilities for processing cheese and other products in
17 local fluid markets should have their margins reduced for
18 this purpose, so that milk production in such markets may be
19 further increased by resultant increases in producer blends.

20 As far as the Cooperative which I represent is con-
21 cerned, we are not opposed to any legitimate and economically
22 justifiable reduction in our margins, if it follows from serious
23 and objective analysis that our farmers margins as processors
24 are unduly high relative to the risks and margins available to
25 others similarly situated.

1 As we look upon the problem, the function of current
2 margins is to develop cheese facilities and not to contribute
3 to higher blend prices and additional surpluses in fluid
4 markets. We are seriously concerned about the health of our
5 markets, as we believe manufacturing milk operators are con-
6 cerned with theirs.

7 We would recommend, therefore, that present accumu-
8 lations of market reserves, now running at approximately 37
9 percent of total production, not be encouraged further.
10 Thus, we would suggest that any assessment of higher Class II
11 prices in our market area be accompanied by correlatively
12 moderated Class I differentials.

13 As we see and understand the statute under which
14 this hearing operates, its function is the procurement of an
15 adequate supply of pure and wholesome milk for fluid market
16 uses and not for the accumulations of milk to go into the
17 production of cheese.

18 The validity of the M-W series as an independent
19 and free measure of manufacturing milk values is open to
20 serious question. There are additional reasons for asserting
21 that the values it purports to represent are not appropriate
22 for application in eastern markets, assuming its continued use
23 in midwestern areas.

24 The M-W series does not, for instance, measure
25 certain costs which govern the operation of eastern processors